Volume 33 OCTOBER, 1949 Number 3

Journal *of the* American Judicature Society

TWO NEW NATIONAL LEGAL ORGANIZATIONS
EDITORIAL

CONFERENCE OF CHIEF JUSTICES IS ORGANIZED
CHAIRMAN HYDE'S ADDRESS

THE BUSINESS OF JUDICIAL ADMINISTRATION
FRED M. VINSON

THE BAR PROGRAM AGAINST UNAUTHORIZED PRACTICE
EDWIN M. OTTERBOURG

THE TIMING OF THE CHARGE TO THE JURY
RICHARD HARTSHORNE

BAR ASSOCIATIONS WIN A.B.A. AWARD OF MERIT
F. M. SERCOMBE

AMERICAN JUDICATURE SOCIETY
Ann Arbor, Michigan

THE AMERICAN JUDICATURE SOCIETY

To Promote the Efficient Administration of Justice

Founded in 1913 by Herbert Lincoln Harley

Hutchins Hall

Ann Arbor, Michigan

President: GEORGE E. BRAND

Vice-Presidents: HOWARD L. BARKDULL, HOMER CUMMINGS, FRANK C. HAYMOND, JOHN J. PARKER, GEORGE ROSSMAN

Chairman of the Board: ALBERT J. HARNO

Secretary-Treasurer: GLENN R. WINTERS

DIRECTORS

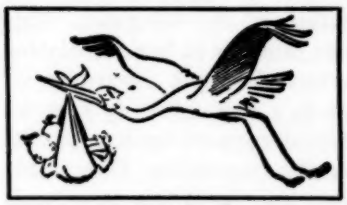
Alabama—WALTER B. JONES
WILLIAM LOGAN MARTIN
Arizona—CHARLES H. WOODS
Arkansas—HARRY J. LEMLEY
LAMAR WILLIAMSON
California—CHARLES A. BEARDSLEY
ALEXANDER MACDONALD
WILLIAM C. MATHES
LOYD WRIGHT
Colorado—HUBERT D. HENRY
ORIE L. PHILLIPS
Connecticut—JOSEPH F. BERRY
CHARLES E. CLARK
CHARLES M. LYMAN
Delaware—JAMES R. MORFORD
District of Columbia—
WILBUR L. GRAY
BOLITHA J. LAWS
ROBERT N. MILLER
WILL SHAFROTH
Florida—CODY FOWLER
RAYMER F. MAGUIRE
WILLIAM H. ROGERS
Georgia—E. SMYTHE GAMBRELL
Idaho—HUGH A. BAKER
Illinois—RICHARD BENTLEY
TAPPAN GREGORY
CHARLES B. STEPHENS
BENJAMIN WHAM
Indiana—L. L. BOMBERGER
BERNARD C. GAVIT
CHASE HARDING
Iowa—FREDERIC M. MILLER
BURT J. THOMPSON
Kansas—W. E. STANLEY
Kentucky—HARRY B. MACKOY
Louisiana—PAUL BROSMAN
EBERHARD P. DEUTSCH
Maine—CLEMENT F. ROBINSON
Maryland—EMORY H. NILES
CHARLES RUZICKA
Massachusetts—
FRANK W. GRINNELL
PAUL F. HANNAH
ROSCOE POUND
Michigan—GLENN C. GILLESPIE
DEAN W. KELLEY
E. BLYTHE STASON
EDSON R. SUNDERLAND
Minnesota—CHARLES LORING
MORRIS B. MITCHELL
Mississippi—HUBERT S. LIPSCOMB
Missouri—JOHN T. BARKER
RONALD J. FOULIS
LAURANCE M. HYDE
THOMAS F. MCDONALD
Montana—JULIUS J. WUERTHNER
Nebraska—HARVEY M. JOHNSEN
ROBERT G. SIMMONS
Nevada—LESTER D. SUMMERFIELD
New Hampshire—
WILLOUGHBY A. COLBY
New Jersey—WILLIAM W. EVANS
RICHARD HARTSHORNE
ARTHUR T. VANDERBILT
New Mexico—SAM G. BRATTON
New York—HAROLD R. MEDINA
HARRY D. NIMS
ADOLPH J. RODENBECK
HAROLD J. GALLAGHER
North Carolina—
JOHN S. BRADWAY
FRANCIS E. WINSLOW
North Dakota—
WILLIAM H. HUTCHINSON
Ohio—DONALD A. FINKBEINER
JOSEPH O'MEARA, JR.
ROBERT N. WILKIN
CARL V. WEYGANDT
Oklahoma—RAY S. FELLOWS
A. W. TRICE
Oregon—JAMES C. DEZENDORF
Pennsylvania—
JOHN G. BUCHANAN
ROBERT DECHERT
STERLING G. MCNEES
WILLIAM CLARKE MASON
Rhode Island—HENRY C. HART
South Carolina—
PINCKNEY L. CAIN
South Dakota—VAN BUREN PERRY
Tennessee—
WALTER P. ARMSTRONG, JR.
Texas—WILLIAM P. CARSSOW
JAMES L. SHEPHERD, JR.
DAVID A. SIMMONS
Utah—PAUL H. RAY
Vermont—OSMER C. FITTS
Virginia—STUART B. CAMPBELL
EDWARD W. HUDGINS
Washington—W. G. MCLAREN
ALFRED J. SCHWEPPE
West Virginia—CHARLES C. WISE
Wisconsin—GILSON G. GLASIER
RALPH M. HOYT
CARL B. RIX
Wyoming—H. GLENN KINSLEY

THIS JOURNAL will be sent free on request to any person interested in the administration of justice. Extra copies and back numbers are available at prices indicated in the price list of publications elsewhere in this issue. Published bi-monthly, in February, April, June, August, October and December. Permission is hereby given to quote from or reprint, with credit, any article or editorial originating in this or any other issue. The JOURNAL is a clearing-house of fact and opinion with respect to all matters connected with the administration of justice in this country. Views and opinions in editorials and articles are not to be taken as official expressions of the Society's policy unless so stated, and publication of contributed articles does not necessarily imply endorsement in any way of the views expressed therein. Readers are invited to submit news of developments in the field of judicial administration in their respective localities, and articles for publication, which should preferably be not more than 3,000 words or ten pages of manuscript, double-spaced. Editorial offices: 424 Hutchins Hall, 621 S. State St., Ann Arbor, Mich.

JOURNAL OF THE AMERICAN JUDICATURE SOCIETY

Vol. 33, No. 3 GLENN R. WINTERS, Editor October, 1949

Two New National Legal Organizations Are Born



TWO NEW national organizations of great actual and potential importance to the administration of justice have appeared on the legal horizon since the last issue of the JOURNAL was published. The Conference of Chief Justices, organized in St. Louis on September 3, was mentioned on this same page of the June JOURNAL, and an account of its first meeting appears on another page of this issue, along with the address of Chief Justice Vinson at the Judiciary Dinner of the United States, with which its beginning was celebrated.

The other one came into being with somewhat less fanfare in the Somerset Hotel, Boston, on October 13, when the delegates attending the Twenty-Seventh Annual Legal Aid Conference sponsored by the National Association of Legal Aid Organizations voted to adopt a new constitution ending the latter organization and substituting in its place a newly-created National Legal Aid Association.

The change is more than a matter of names. The old N. A. L. A. O. was a federation of somewhere between fifty and a hundred local legal aid societies and agencies of various types throughout the country. It served a useful purpose in encouraging adoption of minimum and uniform standards for legal aid service everywhere, keeping statistical records of legal aid work done, and, with the assistance in recent years of the American Bar Association Committee, actively promoting the extension of legal aid service to communities where it had not formerly been available. It had no source of income other than its constituent members, however, which in turn are largely dependent upon such resources as community chests. Hence, its finances never were equal to the work before it, and indeed the final treasurer's report indicated that the 1949 budget was in arrears, although it was expected to be balanced before the end of the year.

The most important feature of the new National Legal Aid Association is the fact that it provides for individual and professional memberships, dues for which have been set at ten dollars a year. It is to be governed by a nation-wide board of directors of thirty-nine members, including representatives of affiliated legal aid organizations and also prominent professional and business leaders known

The idea that lawyers should unite to promote a more efficient administration of justice, was first proposed by Herbert Lincoln Harley, who devoted the best years of his life to this form of public service.

TABLE OF CONTENTS

THE NATIONAL LEGAL AID ASSOCIATION, Editorial 67
CONFERENCE OF CHIEF JUSTICES IS ORGANIZED IN ST. LOUIS, with address by Laurance M. Hyde..... 70
THE BUSINESS OF JUDICIAL ADMINISTRATION, by Fred M. Vinson..... 73
SILVER ANNIVERSARY OF THE JUDICIAL COUNCIL MOVEMENT, Part II, by Glenn R. Winters..... 79
THE NATIONAL BAR PROGRAM AGAINST UNAUTHORIZED PRACTICE OF THE LAW, by Edwin M. Otterbourg 85
THE TIMING OF THE CHARGE TO THE JURY, by Richard Hartshorne 90
OHIO, COLORADO, COLUMBUS, OHIO, AND BEVERLY HILLS, CALIFORNIA, BAR ASSOCIATIONS WIN A.B.A. AWARD OF MERIT, by F. M. Sercombe 92
TULANE UNIVERSITY OFFERS NEW LAW-SCIENCE COURSES 94
LEGAL PROFESSION COMMEMORATIVE STAMP PROPOSED 94
TEXAS AND MILWAUKEE WIN JUNIOR BAR AWARDS 94
THE LITERATURE OF JUDICIAL ADMINISTRATION 95
NEW MEMBERS OF THE AMERICAN JUDICATURE SOCIETY 96

for their interest in legal aid work. Members of the bar should and will welcome the opportunity afforded by the professional membership classification to contribute a small sum each year toward the furtherance of this important work. Bar associations, lay individuals and organizations, and foundations may be expected to contribute larger amounts.

Inspiration to that end, if needed, might be gained by listening in on a working session of the Conference, or the corridor conversation of the delegates. This is no ordinary gathering of lawyers. Most of the topics familiar to bar association conventions are missing. One elderly gentleman arises during a discussion of limiting the case load to relate how he sat up nights in a vain effort to keep up with a mounting case load with no increase in financial support until a partial paralytic stroke warned him that he was attempting the impossible. One of his comrades in the Association left legal aid a few years ago for a job in a bank, but turned his back on a vice-presidency to return to the work which meant more to him than a successful career in the world of finance. A blind lawyer and his seeing-eye dog provide legal aid service to an industrial city with the help of students from a nearby law school. All of them, like Abou Ben Adhem, are doing it for love of fellow-man and of this form of service to him. On salaries which are only modest at best, they represent a fair cross-section of legal talent, and they are respected by the bar in general, the courts, and their professional opponents. Their tales of exploits on behalf of their clients are told with as much relish as if they had been done for lucrative retainers.

All signs point to a great increase in legal aid business in the near future. A few big cities and many smaller communities are still getting along with no organized provision for it. The bar always has acknowledged its responsibility for protecting the legal rights of everybody, not just those who can afford a fee. In an earlier day this responsibility was met by individual lawyers serving all who came to their doors and billing only those who could pay. In modern America this has become a virtual impossibility. Organized legal aid is the twentieth-century answer to the legal needs of the poor who are always with us. Public charity in this, as in other fields, is a general public responsibility, and legal aid offices regularly share in community chest budgets all over the country, but charity and welfare groups cannot render legal aid service nor set up the means for rendering it. That is the responsibility of the lawyers of America. Through the combined efforts of the N. A. L. A. O. and the A. B. A. committee, great strides have been taken in recent years. The new National Legal Aid Association offers an improved vehicle through which every bar association, large and small, and every individual lawyer, may share in an organized effort to meet that responsibility as it should be met.

The American Judicature Society welcomes the Conference of Chief Justices and the National Legal Aid Association to the fellowship of national organizations in the legal profession, congratulates their chief executives, Chief Justice Laurance M. Hyde of Missouri and the Honorable Harrison Tweed of New York, and rejoices that new and promising reinforcements have joined its thirty-six-year-old campaign "to promote the efficient administration of justice."

NOT EXACTLY a national organization in the legal profession, but close enough to it to deserve mention along with the two organizations referred to above, is the American Law Student Association, organized in St. Louis on September 6th by delegates from forty-eight law schools in all parts of the country.

Objects of the Association are to acquaint law students with the activities of the American, state and local bar associations, to introduce them to professional problems they will later face, and to help them with problems of placement after graduation. To the American Law Student Association and its first president, Richard J. Flickinger, University of Pittsburgh law student from Ligonier, Pa., we also extend congratulations and good wishes.

TEN YEARS AGO the Supreme Court of Arizona made legal history by being the first to adopt a state code of civil procedure so closely patterned after the new federal rules as to achieve substantial conformity between state and federal practice. There have been extensive revisions of the federal rules since that time, however, and conformity in 1940 would not necessarily mean conformity in 1950 without definite intention and effort to that end. The Arizona court has just assured its continued leadership in procedural reform by announcing a thorough revision of Arizona civil rules to bring them in line with various changes in the federal rules during the past decade. Chief Justice Arthur T. La Prade and his court, and the bar of Arizona, which is co-operating in the venture, are to be congratulated upon this progressive move.

IT IS SAID that one out of seven marriages in America results in divorce. It is not material whether the statistics are correct or not, or whether some of the figures represent duplication by habituals. It is becoming more and more apparent that divorce has become the medium for the disintegration of the family rather than an epitaph to a marriage already defunct.

Our Anglo-Saxon system of law and the major part our profession plays in it are largely responsible for this situation. We are accustomed to think and act entirely for the preservation and vindication of vested or accrued rights. The granting of divorce has been posed not against the question, "Should a divorce be granted? Will a divorce be beneficial to the parties involved, including the children?" but against the question, "Is the petitioner or plaintiff, as a matter of law, entitled to it? Has a cause for divorce, defined by law, accrued in favor of the petitioner by the presence of some specific fact?"

It is true that our law, as spoken by the judiciary, has repeatedly recognized and pronounced that marriage is not altogether a simple contract between two parties; that society, or the state, has an interest in the status of marriage, so that it cannot be dissolved by the wish and simple will of the parties. But our system does not provide an *amicus curiae* to represent that third party, the state, in uncontested cases. It is rumored that if there were an *amicus curiae* representing the public in every uncontested case, perhaps nine out of ten would result in denial of divorce.

We in America have placed in the hands of administrative bodies many such discretionary actions relating to labor, utilities, etc. But in the vital problem of the family institution, the death sentence is given upon the existence of some fact or event, earned as a matter of right.

If we recognize divorce as an evil, not merely a symptom but an active disease, then we must seek a remedy.—*Condensed from an editorial in the New Jersey Law Journal.*

Conference of Chief Justices Is Organized in St. Louis

THE CONFERENCE OF CHIEF JUSTICES came formally into being on September 3, 1949, when representatives of nearly all of the state courts of last resort assembled in the Jefferson Hotel, St. Louis, Missouri, and effected their long-planned organization.

Chief justices present included Arthur T. La Prade, Arizona; Benjamin C. Hilliard, Colorado; William M. Maltbie, Connecticut; W. Watson Harrington, Delaware; W. H. Duckworth, Georgia; Charles H. Thompson, Illinois; Frank E. Gilkison, Indiana; Norman R. Hays, Iowa; William W. Harvey, Kansas; Porter Sims, Kentucky; John B. Fournet, Louisiana; Harold H. Murchie, Maine; Stanley E. Qua, Massachusetts; Edward M. Sharpe, Michigan; Charles Loring, Minnesota; Laurance M. Hyde, Missouri; Harvey McGhee, Mississippi; Hugh R. Adair, Montana; Arthur T. Vanderbilt, New Jersey; Charles R. Brice, New Mexico; John T. Loughran, New York; William L. Nuessle, North Dakota; Carl V. Weygandt, Ohio; Denver N. Davison, Oklahoma; Hall S. Lusk, Oregon; George W. Maxey, Pennsylvania; A. B. Neil, Tennessee; James E. Hickman, Texas; Eugene E. Pratt, Utah; Edward W. Hudgins, Virginia; Frank C. Haymond, West Virginia; and Marvin B. Rosenberry, Wisconsin.

The following associate justices were designated by their respective chief justices to attend the conference as representative of the court; Joel B. Brown, Alabama; Ed F. Mc Faddin, Arkansas; Douglas L. Edmonds, California; Glenn Terrell, Florida; Raymond L. Givens, Idaho; Milton B. Badt, Nevada; Frank R. Kenison, New Hampshire; G. Dewey Oxner, South Carolina; Olin M. Jeffords, Vermont; and E. W. Schwellenbach, Washington.

After welcoming remarks by Judge Richard Hartshorne, chairman of the A. B. A. Section of Judicial Administration and George E. Brand, president of the American Judicature Society, the group created a temporary and later a permanent organization. Chief Justice Laurance M. Hyde, chairman of the organizing committee, was elected temporary chairman and then permanent chairman. Glenn R. Winters, secretary of the American Judicature Society, was appointed secretary of the organization meeting and "reporter" for the permanent organization. Other officers elected included Chief Justice Edward W. Hudgins of Virginia, vice-chairman, and an executive council consisting of Chief Justices Charles Loring of Minnesota, John T. Loughran of New York, Stanley E. Qua of Massachusetts, J. E. Hickman of Texas, and Carl V. Weygandt of Ohio.

The remainder of the conference sessions were devoted to discussions of matters of interest to the chief justices and their courts. These included opinion writing, oral arguments, court organization and administration and the granting of habeas corpus petitions. The latter subject was under discussion at the time of adjournment, and so great was the interest in the discussion that the motion for adjournment passed by a divided vote.

To improve the time between then and the next conference session, which will be just before the 1950 A. B. A. convention in Washington, the group voted to undertake factual studies of methods in use in the various jurisdictions for presenting the record on appeal, the number and structure of briefs, the manner of hearing and considering the appeal, the preparation and presentation of opinions, and such other matters as concern the determination of a cause.

Frank Bane, executive director of the Council of State Governments, was present to tender the services of that organization to the Conference on the same basis as it serves the conferences of governors and attorneys-general.

The greetings of President Brand at the opening session were supplemented by those of President Frank E. Holman of the American Bar Association and Chief Justice Fred M. Vinson of the United States Supreme Court at the impressive Judiciary Dinner of the United States, Tuesday evening, September 6, which was broadcast to a nation-wide radio audience.

"The responsibility for the administration of justice," said Mr. Brand, "and for its integrity and efficiency, rests upon the judiciary, and extends to every judge, regardless of the division in which he or she serves. That duty should not be ignored, and the responsibility for its discharge cannot be bypassed or constitutionally bridged to others. If the system of administering justice is inefficient, inadequate, outmoded or thwarted by any means or by anyone, or if public confidence in or respect for the judicial process is waning or lacking the judiciary and each member thereof has the responsibility for effecting correction. The entire judiciary of a state should collectively, consider itself to be what it constitutionally is—an official department of government; and its needs should be developed and considered accordingly; but, nonetheless, each member of judiciary should recognize his individual relationship."

"Many paper declarations of individual freedoms have been adopted from time to time in other lands," observed President Holman in his address at the Judiciary Dinner, "but they have remained paper declarations. Why? Because to be effective they must be implemented with the practical machinery of an independent judiciary where each citizen can have his day in a truly independent court and protect his individual right to life, liberty and the pursuit of happiness. Without this free access to independent courts—independent of both the executive and legislative power—all our basic rights and freedoms would be mere high-sounding paper declarations of things to be hoped for, but largely dependent upon the executive or legislative will of the particular majority for the time being in power."

President Holman expressed the hope that the Judiciary Dinner would become an outstanding annual event at American Bar Association meetings to offer "an annual opportunity for a reaffirmation and a re-emphasis of the importance of the judicial branch of government in the several states and in our federal constitutional republic."

ADDRESS OF CHIEF JUSTICE HYDE

Chief Justice Hyde, the first chairman of the Conference, traced a pattern of its objectives and activities in his address at the dinner.

"The conference of Chief Justices," he said, is the outgrowth of a long-felt need for consultation among the highest courts of the several states concerning matters of importance in improving the administration of justice. We believe it will be of great benefit to the judiciary, the bar and the public.

"The philosopher John Stuart Mill once said that liberty is the greatest incentive to progress because with liberty there are as many opportunities for improvement as there are free men. To paraphrase Mill, I would say that in the Conference of Chief Justices there are as many opportunities for improving the administration of justice as there are courts represented in it. The improvement of the administration of justice must be a continuous process. The operation and needs of the judicial system must be constantly surveyed and tested. New and more complicated duties are required of the judiciary under the conditions of our modern industrial civilization.

"In pioneer days, people had few contacts with other parts of the country, courts and judges were necessarily isolated from each other. Each had their own special conditions and peculiar problems. Now most problems are nation-wide, and city, county and state boundaries do not change them. There are, no doubt, many ways of handling appeals, writing opinions and administering the business of a court. Undoubtedly some are better and more efficient than others. Discussion and study of the methods and procedures by which the state supreme courts do their work and supervise the judicial departments in their states will surely be beneficial to all. There can be no better way to do this than by person-to-person contact and acquaintance among the judges. The helpfulness of such methods, not only to the officials involved but to the public in more efficient service, has been demonstrated in recent years by the Governors' Conference, the Conference of Attorneys-General, the National Conference of Commissioners on Uniform State Laws, and the American Law Institute.

"It is not surprising that throughout history there has been recurrent criticism of the operation of courts. The courts deal with the unusual—pathological—result of human relations. Thousands of transactions between people in most matters of commerce and of life take place every day without friction. That is the usual result. Only an occasional transaction cannot be settled by the parties involved and becomes a case for the courts. However, it is well to remember that when a controversy arises which must be taken to court for determination, it usually has caused the parties considerable trouble already, and they desire to be relieved of further annoyance as soon as possible, just as when people go to a physician they want prompt relief from their physical ailments. To them, time is of the essence. Furthermore, as Judge Learned Hand has observed, 'The temple of justice we think of as especially our own, but its roof covers more than we can occupy. For justice is no less than the Good Life.' So we must not forget that improving the administration of justice is of concern to every citizen, and that is why the success of this conference is so important.

"I would emphasize three matters of outstanding importance in improving the administration of justice in our states which I think our Conference should carefully consider.

"First. Under modern conditions it is essential that there be some head to a state judicial department. Some judge or court must be charged with responsibility for the efficient operation of the whole system. To accomplish this there must be authority to temporarily transfer judges from courts where the work is light to courts that are overburdened. In the larger and more populous states, an administrative office is needed to obtain information about the condition of dockets and to assist in the administrative work of the courts, as has been found necessary in the federal judicial system. It will be most helpful to have the benefit of the experience of those courts which have pioneered in this field.

"Second. Modern conditions also require higher qualifications for the successful operation of government. Certainly there is no branch of the government in which high qualifications are more important than in the judicial branch. Judges, the same as persons in other positions requiring special knowledge and training, should improve with experience in doing their work, but in many states men are turned out of judicial office about as soon as they have learned how to do the job well. The party election system may work well in rural districts of small population where the voters can have personal acquaintance with the candidates for judicial office; but voters can have little informed basis for their decisions on judicial officers elected on state-wide tickets or in large cities; and therefore they take little interest in them. The results turn on national political issues and not on the ability, record or qualifications of the judicial candidate. This was illustrated by our experience in Missouri, before the adoption of our nonpartisan plan for selection and tenure of judges in 1940, when all candidates for judicial office ran in party primaries and as party candidates. In ten elections during the twenty years before the adoption of the new plan (1919-1939), only twice was a judge of the Supreme Court of Missouri re-elected to a second term after having served a full ten-year term. One able former member of our supreme court (elected to complete an unexpired term after making an excellent record as a commissioner), said that he was chosen by the people to be a judge in 1916 because Woodrow Wilson had kept us out of war, but that he was retired from office in 1920 because he had not. It has been well said that a politician can be a good judge if he can stop being a politician after he goes on the bench, but that the partisan election system requires a judge to be a politician to remain a judge. There must be no partisanship in the administration of justice, and there should be none in the selection and tenure of judges. Missouri now has a system which we believe utilizes the best features of both the appointive and elective systems and provides safeguards lacking in either. Other states can learn from our experience with this "Missouri Plan" of selection and tenure, as we can learn from their experience in other matters.

"Third. It is of greatest importance to seek improvement in the administration of justice in all courts. We must not limit our efforts to improvements in appellate courts or in trial courts of general jurisdiction. No courts are more important than those which try infractions of traffic laws, hear misdemeanor cases, determine small claims and causes, and hold preliminary hearings in felony cases. They should not be thought of or referred to as minor courts merely because they do not decide controversies involving large amounts of money or try felony cases of great public interest. Their great importance is that they are the courts which most of our people will actually see in operation. Many will have contact with no other courts. It is unusual to have more than a half-dozen visitors at the arguments of cases in our state supreme courts, even in cases involving millions. But traffic courts, municipal courts, magistrate courts and justice of the peace courts will frequently be crowded by many spectators. More important still, the youth of our nation, the foreign-born, our workers and many citizens of ordinary means get their first and often their only impression of our whole judicial system from these courts. This moulds their views of the administration of justice. They judge all government, both state and national, by what they see there. Will their first impression in these courts cause them to have respect for law and confidence in the courts? If this experience gives our people a bad impression of their government, we cannot remove it by high-sounding speeches. That is why we must strengthen the entire judicial system, see that all courts are conducted with dignity, and deal out justice fairly. Only this will accomplish complete results in improving the administration of justice and give the judicial department the respect it must have to make our institutions of democracy work properly. Chief Justice Vanderbilt has given us an example of outstanding achievement in this field in New Jersey.

"Improvements sometimes will come surprisingly fast if we will just make the effort to get things started. As in everything else, we can do almost anything we believe we can do. I once heard Mr. Charles F. Kettering, the great inventor of General Motors, illustrate this by saying that within a few years prior to each of the great inventions of our time (the automobile, airplane, radio, etc.), great scientists had demonstrated by plain laws of mathematics

and physics that it could not be done. It also has been stated that it could be mathematically demonstrated that a bumble bee cannot fly because his wing spread is not great enough for the size of his body. But the fool bee does not know anything about mathematics, and so he goes ahead and flies anyhow. Therefore, it is best to combine knowledge with faith, and I have faith that this Conference will be a success.

"In the Federalist papers, the founders of our government stated that a strong, well-qualified and independent judiciary was 'equally requisite to guard the constitution and the rights of individuals.' We have twice in our generation fought in world-wide conflicts to preserve the way of life our fathers established on this continent. But this cannot be done by war alone. It is less dramatic but just as essential to make all of the institutions of our democracy function efficiently and fairly. The challenge to us is to strengthen public confidence in our institutions by improving the administration of justice in both state and nation. We have seen the lamps of justice grow dim and become entirely extinguished in many parts of this troubled world. It is our task to keep them shining brightly here. That is the high purpose of our Conference."

The text of Chief Justice Vinson's address to the Conference follows.

The Business of Judicial Administration

By FRED M. VINSON

"This, as I see it, is the challenge and the opportunity facing the Conference of Chief Justices—to find the best methods of state judicial administration and to bring home to the citizens and their representatives the vital necessity for the adoption of businesslike techniques."

I AM very happy to have been preceded tonight by two such delightful and interesting speakers as the distinguished Chairman of the Conference of State Chief Justices and the able and eminent president of the American Bar Association. Recently I had begun to feel that after-dinner speaking was on its way out, and hesitated to impose myself upon you in the face of a new trend toward speechless banquets. I have noticed several straws in the wind. As an example, I cite the Chicago Bar Association's Diamond Jubilee, about which one report triumphantly noted that "not a single speech was delivered by any of the distinguished judges, lawyers, or guests who were present."

Now, this new trend has so much in logic and experience to support it, that I hesitate to continue. However, there are many old banquet-table precedents upon which I can rely, and their value has been considerably enhanced by the addresses you have just heard. After hearing what I have to say you may conclude that these precedents are clearly distinguishable, but I have decided to rely upon them and proceed, even though it results in a death-blow to the doctrine of *stare decisis*.

First, I should like to ask the members of the Conference a very blunt question: Why have you come to St. Louis? What justifies the great labor and expense that went into the organization of this conference?

With all due respects for our hosts, the City of St. Louis and the State of Missouri, I venture to say that none of us came here for the climate. Nor did we come primarily because we are lawyers or even judges. We are here because we are Chief Justices or their representatives, officers charged with responsibility in the administration of the courts, and because we are sincerely desirous of improving the administration of justice in those courts. We are here because we believe that the business

Address by the Chief Justice of the United States at the Judiciary Dinner of the United States, Hotel Jefferson, St. Louis, September 6, 1949.

now handled by the courts belongs in the courts, because we believe in the safeguards which surround litigation, and because we believe that the courts can do the job!

Commentators have often noted the fact that courts are never criticized so much for their decisions as for their administrative deficiencies —excessive delay and expense and needless technicality. English literature is full of barbs aimed at this invidious trio. We who are charged with responsibility for court administration should not easily forget the old apothegm, "Agree, agree, for the law is costly," or Lord Tennyson's scornful reference to "The lawless science of our law," or Hamlet's listing of "The law's delay" as one of the "whips and scorns of time," or Dickens' caricature of the courts in the famous case of *Jarndyce* v. *Jarndyce*, in which, as you will remember, "the little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world . . . but Jarndyce and Jarndyce still drags its dreary length before the Court, perennially hopeless." We should be ill-advised to dismiss these criticisms of the courts either as out-of-date or entirely the products of writers' fertile imaginations.

That such criticism is valid even today is due, I am convinced, to the fact that many judges and legislators have failed to realize the administration of the courts is a business, and that effective judicial administration requires the establishment of businesslike methods. Such a program, in my opinion, presents the most important and challenging project facing the American Bench and Bar today.

BUSINESS TECHNIQUES IN THE COURTS

If court administration is to be placed upon a businesslike basis, it seems only logical that we should examine, by way of analogy, some of the practices adopted by successful businesses. What techniques, we may ask ourselves, has business adopted to secure the maximum of efficiency and economy in its operations? Let us examine a few of the business techniques which might be applicable to the work of the courts.

In the first place, a successful businessman employs an accountant or business manager who maintains the records, studies possible economies, and is able at any time to prepare analyses truly reflecting the financial status of the business. Do you have an administrative assistant who keeps an accurate account of your production and expenses—one who implements the administrative policy decisions?

A businessman knows his inventory — the nature of every item and its rate of turnover. Do you know the condition of your inventory: How many cases are before your courts, the average time required for their disposition, the causes of any delays?

A businessman knows his personnel. He keeps informed about the work load in each of his departments. He shifts personnel when that load is unevenly distributed. Are you able to maintain such a personnel policy? Or are some of your courts overworked, while others are overstaffed?

A businessman holds frequent meetings with the officers in charge of his various departments and operations. He studies the methods of other businessmen and meets with them to discuss common problems, techniques and experiments. Do you hold meetings with the judges of your state to discuss the problems which confront them and the state judicial system as a whole?

A businessman also keeps zealous watch over his costs. He is ever on the alert to obtain more effective results with the available men and equipment. If he decides that he needs new machinery, new methods, new locations or expanded plant facilities, he presents the facts to his board of directors and requests authority to carry out the proposed improvement program. Do you have such facts at your ready disposal? Do you know whether your courts are located where they are most needed and whether they are adequately staffed? Are you searching for ways to reduce costs?

I realize that an organization capable of carrying out the kind of program I have indicated cannot spring up overnight. Also realize that the "stockholders" to whom we as businessmen must turn for authority—the legislatures —have not in most cases sanctioned programs as ambitious as I have indicated are necessary.

Nevertheless, I think it can be demonstrated that two essentials underlie the most effective administration of our judicial systems. First,

there must be some continuing organization which can gather statistics, make studies, conduct experiments, and generally integrate the administration of the various courts of the jurisdiction. Second, within each jurisdiction there must be frequent interchange of ideas and suggestions by judges representing all of the courts. If the legislatures can be shown that through the adoption of such a program the courts can be made more efficient—delays minimized, technicalities decreased and expenses lowered (perhaps I should have placed this item first)—their approval will, I am confident, follow swiftly.

This, as I see it, is the challenge and the opportunity facing the Conference of Chief Justices—to find the best methods of state judicial administration and to bring home to the citizens and their representatives the vital necessity for the adoption of businesslike techniques. Just as businessmen profit from the mutual exchange of ideas and experiences in meetings devoted to the discussion of common problems, you who are charged with the administration of state judicial systems may learn from one another. Chief Justice Vanderbilt has not been hiding the fact that New Jersey's new administrative program works extremely well, and in a moment I am going to tell you of some of our experiences in administering the federal court system. You may conclude that none or only a small part of the programs that New Jersey and the federal government have established is desirable or feasible in your state. But there will be other ideas, programs, and experiences reported in meetings next year and thereafter. A forum for the discussion of judicial business, the business of running this gigantic industry called the courts, cannot help but pay substantial dividends in increased efficiency and economy in courts throughout the country.

I do not mean to minimize the benefits that the conference will bring through consideration of such topics as opinion writing and assignment of cases. These are important and worthwhile subjects. But I do want to emphasize, if I may once again, that the Conference can assert a tremendous influence in the broader field of judicial administration by providing a forum and a testing-ground for new ideas and procedures, which, when proven in one state, may well commend themselves to judges and legislators in other states. I sincerely hope that some of the reports and resolutions to be made at the conferences will be published and circulated to the Bench and Bar throughout the country.

To illustrate the possibilities of accomplishment which lie before this Conference and to indicate how we in the federal court system have attempted to achieve a business basis, I should like to tell you something of a similar organization, the Judicial Conference of the United States, known until recently as the Conference of Senior Circuit Judges.

THE FEDERAL JUDICIAL CONFERENCE

In 1922, largely through the efforts of Chief Justice Taft, what is now known as the Judicial Conference of the United States was established. The scope of the first meeting was limited to alleviation of crowded dockets by redistribution of judges. But it was a significant step. For it provided a permanent forum for the discussion of judicial business, and attendance at the Conferences became a part of the assigned duties of senior circuit judges.

Under the skillful and devoted direction of Chief Justices Taft, Hughes and Stone, the work proceeded apace. Of course, all the Conferences have been concerned with the condition of the dockets, the need for new judges, and with salary, promotional and expense problems of judges and judicial employees. In addition, earlier Conferences treated such specific issues as expedition of criminal cases, review of clerks' fees, assistance to the Supreme Court in the formulation of the Federal Rules of Civil Procedure, elimination of the disparity of sentences imposed in different districts, establishment of a conference of district judges, and formation of an administrative office for the federal courts, about which I shall say more in a moment.

Since 1946, the Conferences have dealt with the system of appointment and compensation of referees in bankruptcy, the fee schedules of United States Commissioners, selection of jurors and increases in their compensation, habeas corpus procedures, pre-trial techniques, courthouse building plans, establishment and supervision of the court reporter system, and codification and revision of the Civil and Criminal

Codes. And these are samples only, not the complete catalog.

I am very happy to report that the Judicial Conference has always enjoyed the generous cooperation of the executive and legislative branches of our government. Congress has indicated its reliance on the Conference by requiring annual reports and recommendations for legislation. I might add that we have interpreted the statute to mean that we may not only make recommendations "for" legislation, the literal language of the statute, but "against" legislation as well.

Congress has also established two other types of conferences of federal judges which meet to consider problems of judicial administration. In each circuit there is a Judicial Council, consisting of the circuit judges, whose function is to supervise the work of the district courts. At each semi-annual meeting, the council considers the condition of the dockets in every district court within the circuit, and the number of cases and motions held under advisement by judges for more than thirty days. The councils are authorized by statute to "take such action thereon as may be necessary." This may take the form of investigation into the causes for delay, recommendations for transfer of judges into congested districts, or directions as to the assignment of cases within the district.

In general, each council is empowered to "make all necessary orders for the effective and expeditious administration of the business within its circuit," and district judges are required to "carry into effect all orders of the judicial council." While their primary concern is thus with local and regional problems of administration, the councils also participate in the solution of nationwide problems. They often make suggestions to the Judicial Conference, and, in turn, are frequently called upon to implement the latter's recommendations.

In addition to the Judicial Council, each circuit has a Judicial Conference of the Circuit, consisting of all district and circuit judges. These circuit conferences meet annually to discuss legislation and other matters affecting federal judicial administration. Under a procedure formulated by a committee of the Judicial Conference of the United States headed by Chief Judge Orie L. Phillips of the Tenth Circuit, the views of each circuit conference on all pending legislation are solicited by the parent Conference and are transmitted to Congress along with its report and recommendations. The "Phillips Plan" also requires that district judges have at least equal representation on Judicial Conference committees appointed to consider proposed legislation affecting district judges and courts.

The circuit conferences are thus closely integrated with the Judicial Conference of the United States. Furthermore, the Judicial Conference has adopted the policy of "consulting the district judges whenever it is reasonably possible to do so before taking any action which affects the interests of the district courts whether or not such action relates to proposed legislation." This policy is furthered by circulation of the agenda of the Judicial Conference to all federal judges several weeks prior to its meeting in Washington. The views of all the judges on matters to be considered are welcome and, I assure you, are earnestly considered.

The Councils and Conferences I have just described were established by the Administrative Office Act of 1939. The accomplishments of the first ten years under the Act have proved a rich reward to those of us who were engaged in furthering its enactment. For, every minute spent by the judges in these conferences and every dollar expended has been repaid many hundredfold in enhanced efficiency in court administration.

THE ADMINISTRATIVE OFFICE

The 1939 Act, which I regard as something of a Declaration of Independence for the federal courts, also created the Administrative Office of the United States Courts. With the establishment of the Administrative Office, the courts became separate and independent of the Executive in administrative matters, just as they have always been separate and independent in their decisions. Prior to 1939, the appropriations for federal courts were included in the annual appropriations for the Department of Justice, and Attorney General Cummings himself recognized that it was "bad in principle and practice that the chief litigant before the courts should have the control of the financing, the budget, the accounting and all the other details which are so intimately a part of the

judicial administration." Under the Act of 1939, responsibility for the business administration of the courts was put where it belongs —in the courts.

Moreover, the Administrative Office serves as a source of information and statistics concerning the business of the Courts. Some service of this kind had also been provided by the Department of Justice prior to 1939, but it was thought, quite properly, that an agency under the control and direction of the courts could perform this service more effectively.

The Administrative Office was therefore set up with two main divisions: The Division of Business Administration and the Division of Procedural Studies and Statistics. Two other divisions—one concerned with bankruptcy administration and the other with probation matters—have since been formed. Let me describe very briefly the functions of the two main divisions.

The Division of Business Administration supervises all administrative matters relating to the offices of clerks and other clerical and administrative personnel in all federal courts, except the Supreme Court, aids the Director of the Office in fixing the compensation of administrative personnel, maintains the payroll and disburses all moneys appropriated for the maintenance and operation of the courts, purchases and distributes supplies, provides accommodations, and, in general, acts as the business manager of the courts.

The Division of Procedural Studies and Statistics gathers information concerning the work of the courts, which it obtains from reports of the judges and clerks, and from periodic visits to the courts. It also makes recommendations as to more efficient procedures. The Division inquires into the reasons for delay in disposition of cases which are pending longer than six months. It reports quarterly as to cases and motions held more than thirty days after submission to district judges and cases pending on reference to masters more than ninety days. These are the reports considered by the various Judicial Councils. I might add that the number of cases and motions held under advisement for more than sixty days has been very significantly reduced since these figures were first reported.

The types of statistics compiled by the Division range from the number of cases filed and terminated in each district court and court of appeals, to a breakdown of bankruptcy cases in each district according to the section or chapter of the Bankruptcy Act under which the action was brought. An illustration of the utility of these statistics is provided by the recently enacted statute establishing twenty-seven new federal judgeships. The data supplied by the Office supplemented the experience and recommendations of the Circuit Conferences and Councils. The reports of the committees of Congress accompanying the bills rely very heavily upon those data. In fact, each new judgeship is individually justified in these reports by the figures prepared by the Office.

The statutes also provide that the Director must "perform such other duties as may be assigned him by the Supreme Court or the Judicial Conference of the United States." These additional duties now include, in part, preparing the agenda for the Judicial Conference, arranging for the temporary transfer of judges, maintaining a continuing liaison with Congress, and scrutinizing all legislation affecting the courts. The Office also prepares the annual budget estimates for the federal court system, excluding the Supreme Court. These estimates are carefully studied by the Judicial Conferences, which makes the final recommendations.

In sum, the Administrative Office is the fact gatherer and business assistant of the courts. By statute the Office is "under the supervision and direction of the Judicial Conference of the United States," and a standing advisory committee of the Conference, consisting at present of Chief Judges Stephens, Biggs, Parker and Phillips, in addition to the Chief Justice, has rendered diligent service. The Office is, in effect, the permanent secretariat for the Conference. You can well understand from this inadequate recitation of the duties of the Administrative Office why I say that a business manager is essential to the effective administration of the courts.

The outstanding success the Administrative Office has enjoyed in its first ten years of operation is a tribute to the vision and ability of its Director, Mr. Henry P. Chandler, and his assistants. Mr. Elmore Whitehurst has been Assistant Director of the Administrative Office since its establishment, while Mr. Leland Tolman and Mr. Will Shafroth are Chiefs of the

Divisions of Business Administration and Procedural Studies and Statistics, respectively. The Divisions of Probation and Bankruptcy, which I mentioned only briefly because they are outside the ordinary field of state judicial administration, although they perform important functions in the federal judicial system, are headed respectively by Mr. Richard A. Chappell and Mr. Edwin L. Covey.

POSSIBILITIES IN THE STATES

Of course, the federal plan of conferences and administrative office organization may not fit the needs or the purses of most state judicial systems. Other plans have also worked very well. I am not, therefore, suggesting that any of the techniques developed in the federal court system are any more effective than the administrative techniques already adopted by many of the states. However, our experience in the federal system has led me to the conclusion, which I want to repeat, that two things are vital to the most effective administration of a court system: First, a permanent business organization under the direction of the judiciary, which can gather information and supervise the administrative details of the judicial system; and, second, a forum in which judges can meet to discuss and formulate plans for solving the administrative problems with which they are faced. In connection with the former requirement, I would direct your attention to the Model Act to Provide for an Administrator for the State Courts. Its provisions, plus the experience of those states which are now embarking upon plans providing for administrative offices, should provide a fruitful source of material for discussion in the coming Conferences of Chief Justices.

These conferences will, I am confident, prove rich and rewarding to those who participate in them. In solving problems of substantive law, you rely upon one anothers' published decisions, not as binding precedents, but as guides and indications of others' analysis, experience, and research. I feel that you will profit fully as much from one anothers' studies and experiments in the field of judicial administration through discussions in the forum of the Conference of Chief Justices.

I regard this inaugural conference as a significant advance in the direction of the more efficient administration of the courts of this country. The conferences to come will provide you with ideas, statistics and experience with which to formulate your plans. Once these plans have been perfected, you must take the lead in securing their adoption. You must convince the Bench, the Bar and the legislature in your state that continuing improvement in court administration through adoption of businesslike methods is vital to public confidence in and respect for the courts. You must demonstrate to the legislature that the money expended in carrying out these plans will be returned with interest. You must assert the right of the judiciary, as an independent and co-equal branch of government, to keep its own house.

I am convinced that the program of administrative reform in the courts will lead to elimination of excessive delay, expense and technicality in court procedure, and that we are thus insuring continuing public support of the courts. I cannot stress too much the importance of this program, for let it never be forgotten that the free courts of this country are the firmest bulwarks of our democracy.

It is the Supreme Court which has stood as the guardian and protector of our form of government, the guarantee of the perpetuity of the Constitution, and above all the great champion of the freedom and liberty of the people. No other known tribunal has ever been devised in which the people could put their faith and confidence, to which they could entrust their choicest treasure, with a like assurance that there it would be secure and safe. There is no power, no influence, great enough to sway its judgments. There is no petitioner humble enough to be denied the full protection of its great authority.—*Calvin Coolidge*

Silver Anniversary of the Judicial Council Movement

(Continued from the August JOURNAL)

By GLENN R. WINTERS

ACCOMPLISHMENTS IN CALIFORNIA

This general discussion of the functions of judicial councils might profitably be supplemented by a look at some of the concrete accomplishments and activities of a few of the more successful judicial councils. Alphabetically, if for no other reason, we may look first at California. The judicial council was organized twenty-two years ago, and its twelfth biennial report will be published in the near future. At its initial meeting on December 10, 1926, the Council agreed that the first thing to be done was to establish a system of judicial statistics, and Judge Harry A. Hollzer volunteered to devote his full time to that work if he could be excused from his regular duties. This was arranged, and he spent several months working out the statistical procedure still in use.[24] This was followed by a survey of judicial administration throughout the United States and Canada, with ideas brought back from all parts of the country for consideration and possible use in California.[25] A bill was introduced in the legislature proposing the establishment of a separate court of criminal appeals. The legislature referred it to the judicial council and the council recommended against it and it was not passed.[26] Following establishment of the system of gathering statistics, the council undertook to assign judges for work in other trial courts to relieve congestion, and from 1926 to 1927 the interval between issue and trial in the Los Angeles Superior Court was reduced from 16 and 18 months to about three months.[27] In 1929, 50 recommendations were made to the legislature regarding pending legislation and 36 of them were followed.[28] Improvements in probate procedure sponsored by the council were estimated to have saved litigants $200,000 in Los Angeles alone.[29]

In 1941 the legislature conferred rule-making power on the judicial council to make rules for appellate procedure in both civil and criminal cases throughout the state.[30] Working through an advisory committee, the council drafted rules which were published and adopted in 1943.[31] The 1943 legislature directed that a study and report be made by the judicial council concerning the procedure of administrative boards, commissions and officers.[32] The council made history with its thorough and extensive study of this subject and its recommendations for uniform procedures for adjudicative hearings in some forty state agencies, and sponsoring of a staff of qualified hearing officers.[33] The Administrative Procedure Act, draft of which was included in the judicial council report,[34] and which was adopted with but minor changes, has been accepted as a model for similar reforms throughout the country, and has operated so successfully that of 1,980 hearings in the twelve months ending in September, 1946, only 17 had appeals for judicial review.[35]

More recently, the council has successfully opposed the creation of a separate court of tax appeals, and it is now at work on a broad survey of superior court rules, expected to reduce

---

Address before the Judicial Council of Kentucky, the first installment of which appeared in the August JOURNAL (33 J. Am. Jud. Soc. 43). Reprints of the entire article are available without charge upon request.

24. J. C. of Calif., First Rep., p. 11 (1927).
25. Hollzer, "Report on the Condition of Judicial Business in the Courts of California, together with a Summary of Research Studies in Other Jurisdictions," Second Report, Part II, pp. 11-69 (1929).
26. 6th Rep., Part I, pp. 3-8 (1936).
27. 8th Rep., p. 6 (1940).
28. 8th Rep., p. 7 (1940).
29. 8th Rep., p. 7 (1940).
30. Laws 1941, Ch. 562 and 477.
31. 10th Rep., p. 6 (1944).
32. Deering's Gen. Laws, 1944, Act. 40.
33. 10th Rep., Part II, pp. 8-172 (1944).
34. 10th Rep., Part II, beginning at page 64 (1944).
35. 11th Rep., p. 11 (1946).

their number by about one-third and improve the working of the superior courts as well.[36]

KANSAS AND NEW YORK

The Kansas Judicial Council, organized one year after California's, reviewed its own twenty-year record and accomplishments in Part IV of its Twenty-First Annual Report. It, too, made the collection of statistics one of its first projects. It also tackled the problem of speeding up court procedures, and made recommendations to that end which were adopted by the supreme court in 1929 and have been in use ever since. For several years the council's attention was devoted to Kansas probate procedure—first in attempts to amend existing laws and finally in the drafting of a complete new probate code, which was adopted in 1939. Hundreds of specific problems have been considered by the council during the years and recommendations made. These include the statutory form of petition in divorce, with unmentionable details relegated to a bill of particulars which is not a part of the record; improvement of jury trial; authorization for judges to comment on the evidence; special verdicts and less than unanimous verdicts; judicial reapportionment; interstate extradition of criminals; the simultaneous death act; and many others. An important matter on the borderline of judicial administration taken up by the council in recent years has been the clarification of real estate titles, no recommendations in regard to which, however, have yet been enacted into law. The problem of selection and tenure of judges is now under consideration by both the judicial council and the legislative council, having been submitted by the recent legislature for study and report.

The Judicial Council of the State of New York, set up and financed on a bigger scale than any other in the country, naturally has a most impressive array of accomplishments. The Fourteenth Annual Report for 1948, following a uniform pattern of previous volumes, lists two pages of current recommendations, six new ones having to do with review of tax assessments, abolishing tender after suit, removal of statutory limitations on counterclaims in matrimonial actions, proposed improvements in the handling of trust cases, small abandoned court deposits, and removal of the present age limitation on certain official referees; and twenty-two renewed recommendations, some of them of several years standing. Two more pages list thirty-two subjects under consideration, on many of which research is now under way.

The council reviews its own activity through the years as follows: "From 1934 to 1941, the Judicial Council concentrated principally on the problem of eliminating undue delay in the courts of civil jurisdiction . . . This problem of delay, which had loomed very large in 1934, appeared to have been substantially solved by 1941. Accordingly, from 1941 to 1947 the council concentrated on the simplification of procedure, practice and administration in the courts and the reduction of uncertainties and expenses of litigation. However, since 1945, delays in tort jury cases have been manifest in some counties of the Supreme Court [due to] the large increase in Supreme Court litigation . . . In order to prevent a continuing deterioration of the condition of the calenders, the council has reinstated the problem of delay as its primary concern."[37]

A summary of the reports to date indicates that since 1934 and through 1947, 258 recommendations were adopted and 41 not fully adopted. During the past year the chief recommendation adopted was a new method of removing judges, which, however, was conceived and promoted by another organization, the Citizens' Committee on the Courts.[38]

The "supporting studies" published in the back of each volume of the New York council's annual reports constitute a library of technical information on procedural matters. An excellent example is the study of judicial rule-making power in the tenth volume.[39]

ACCOMPLISHMENTS IN OTHER STATES

To review similarly the programs and accomplishments of even a few more of the judicial councils would be unendingly monotonous, but we may venture to mention a few more specific projects of various councils in addtion to those already mentioned. Reference already has been made to the Texas Civil Judicial Council's state court organization plan—a research and drafting project which has absorbed the ener-

36. 11th Rep., pp. 12-13 (1946).
37. 14th Ann. Rep., p. 18 (1948).
38. *Ibid.*, p. 21.
39. 10th Ann. Rep., pp. 153-172 (1944).

gies of the group for four or five years.[40] The Judicial Council of Michigan has sponsored and published numerous important research studies in its annual reports. A recent outstanding one was entitled "A Study of Justices of the Peace and Other Minor Courts—Requisites for an Adequate State-Wide Minor Court System," in the Fifteenth Annual Report, followed the next year by a tentative draft of an act to establish county courts of record to supersede justices of the peace and certain other inferior courts. Others include a study of pre-trial procedure in the Wayne County Circuit Court, published in 1936,[41] and a study of declaratory judgments and their availability in different types of controversies, published in 1934.[42]

Two years ago the Judicial Council of Ohio circulated a questionnaire among the members of the bench and bar of Ohio seeking their opinion on fifty-five suggested improvements in court organization and procedure. About 1,000 out of 9,000 distributed were returned, and the answers were included as an appendix to the Council's Eighth Report in 1947. The Judicial Council of Connecticut drafted and sponsored a constitutional amendment to change the method of selecting minor court judges, which was adopted by the people a year ago.[43] The Judicial Council of New Hampshire in its first year recommended and secured an increase in judges' salaries.[44]

ORGANIZATION AND OPERATION

The great bulk of the judicial councils in this country were brought into being by legislative enactment. Those of Alabama, Arizona, Idaho, South Dakota and Utah are an arm of the integrated state bar, and created by a resolution of that body. The Nebraska and Oklahoma judicial councils were established by order of the supreme court, and that of California by constitutional amendment. It would seem preferable to have the judicial council independent of the state bar association, but a bar-sponsored council is better than none at all, and most of these have proved to be active and effective. Their greatest limitation is their complete dependence upon the bar association for financial support. Although establishment by rule of court is probably the most logical method, legislative enactment may be preferable from the standpoint of securing financial support from the state treasury, as well as liason for consultation on bills relating to the judiciary.

MEMBERSHIP

The personnel of the judicial council originally proposed by the Massachusetts Judicature Commission was to consist of one judge each from the Supreme Judicial Court, the Superior Court, and one other court, and two members of the bar. The Massachusetts council today consists of six judges representing six different courts, and four members of the bar, with a fifth member of the bar serving as secretary. There is a wide variety in the makeup of the other judicial councils around the country. Among the leading judicial councils, that of California is unique in that it is composed entirely of judges—five appellate, five trial, and one from a minor court. The Judicial Council of Kentucky with fifty-two judges and a lawyer secretary almost fits the same description, as does the similarly-organized Arkansas council of forty-nine members. The others all have from two to seven members of the bar. Half of the twenty have one or more judges of the inferior courts, as well as circuit or district judges and appellate judges. Half of them also have representatives of law schools within the state. Four include the attorney-general, eight include members of the legislature, and four have a representative of the press. New York includes a Congressman, Ohio the supreme court reporter, Texas a banker, Washington a law librarian, and various statutes call for one or more "citizens at large." For some years one of these in Michigan was a clergyman.

In numbers alone, Ketntucky is the champion, with 53 members. Arkansas is second with 49, followed by North Dakota with 28, each of these including the entire trial and appellate judiciary of the state. New York has 19, Texas 16, Ohio 14, California, Minnesota and South Dakota 12, Nebraska and Utah 11, Washington 10, and Connecticut, Indiana, Kansas, Michigan and West Virginia 9. The smallest appears to be Vermont with 5 members.

Although judicial councils composed of

40. 19th Ann. Rep., pp. 52-66 (1947).
41. 6th Ann. Rep., Part II.
42. 4th Ann. Rep., Part II.
43. 10th Rep., p. 5 (1946).
44. First Report, pp. 13-15 and 48 (1946).

judges alone, and judges and lawyers alone, have done excellent work, there is much to be said for including some or all of the others mentioned. Law school representatives have contributed mightily to the success of the judicial councils in which they have served. From the standpoint of legislative contacts alone, legislative members would seem to be desirable. The attorney-general is in a position to assist the council tremendously. As for laymen, the remarks of "an informed individual" recently quoted by George Maurice Morris, former president of the American Bar Association, are interesting:

"Where either lawyers or judges serve alone they seem to lack the energy for sustained attack. Where judges and lawyers serve together, each group seems to have a diffidence about imposing its views upon the other, which stultifies action. Where, however, laymen are included, their presence seems to act as an 'ice-breaker' and to stir activity among the professional members of the council. Laymen's criticisms are sharper."[45]

In the light of the foregoing, the fourteen-man Judicial Council of Ohio appears to come close to the ideal, both as to size and as to personnel. It consists of the chief justice, the attorney-general, the chairmen of the two judiciary committees of the legislature, the president of the state bar association, the supreme court reporter, and one representative each of the Courts of Appeals, the common pleas courts, the municipal courts, the probate courts, and the League of Ohio Law Schools, and three practicing attorneys appointed by the governor. This would be strengthened by the addition of at least one out-and-out layman, such as a newspaperman. The pattern naturally will vary from state to state, and equally broad representation doubtless could be obtained in most states along with lay participation and still have a smaller number of members. Ten or a dozen would seem to be the optimum number.

The judicial councils of Arkansas, Kentucky and North Dakota, comprising as they do the entire trial and appellate judiciary of their respective states (exclusive of minor courts), are really judicial conferences, differing in no important respect from organizations bearing that name in Maryland, Missouri, Mississippi and other states as well as several of the federal circuits. They should differ from the other judicial councils in program and purposes as they do in numbers. The judicial conference may and does properly concern itself with all the field of the judicial council, but its program ought to be somewhat broader, including whatever interests and concerns judges as a group, and it ought especially to provide a medium for social contact among its members.

45. Morris, "The Judicial Councils of the States," 29 A. B. A. Journal 366 (1942).

THE EXECUTIVE SECRETARY

It is probably a shocking thing to say, but it may be doubted whether the formal membership of the judicial council is as important as its working staff. The best of paper organizations will fail of results, or will have spotty, inconsistent and unreliable results, unless some arrangement is made to provide some person who knows what needs to be done with the time, money and facilities to get it done. This officer has come to be known as the executive secretary, and without his services the wheels of a hundred thousand business, professional, social and other organizations would grind to a sudden stop. Particularly is the executive secretary needed in the case of an organization such as a judicial council, the members of which in the nature of things are likely to be men of distinction, heavily laden with important responsibilities. Much as the members may be in sympathy with its objectives and program, and willing as they may be to contribute their time and energy, other demands upon them which they cannot put off will intervene, and the end of the year will come with nothing done. Anyone who ever has served on a committee of any kind knows how this goes, and how hard it is to resist the pressure, regardless of good intentions. The part-time secretary is better, but so long as his allegiance is divided, the results will be less satisfactory than with a full-time man on the job.

This is not to say that under certain circumstances wonders cannot be accomplished by volunteer workers. Many volunteer organizations have an amazing record, entirely due to the enthusiasm and energy of members. Usually this comes about as a result of one man's catching the vision and throwing himself into the project with reckless disregard of his other

obligations, and sooner or later that man will either lose the vision and become indifferent, or else be compelled to turn his attention elsewhere, and then all he was doing and all the others were doing as a result of his inspiration comes to nought.

The difference that a full-time executive secretary can make in a judicial council may be seen by looking over the reports of the Judicial Council of West Virginia. This organization was founded in 1933. It made reports in 1935 and 1939, but they were not published until 1944, in combination with a third report in that year. A fourth report was published in 1946, and at that time the rejuvenation had begun which resulted in the hiring of an executive secretary a year later. The sixth report, published a few months ago, is a 327-page volume describing the efforts made during the previous year to organize and systematize the gathering of judicial statistics, outlining the work begun on a list of about two dozen research projects, and including reprints of fourteen articles, studies and drafts of legislation having a bearing on the council's program.

The California and New York judicial councils would not be able to begin to touch the volume of work they have been doing without a working staff apart from council membership. The New York council has an executive secretary, three research assistants, one in charge of judicial statistics, one dealing almost exclusively with library work, and a third in charge of office administration and field work, and three stenographer clerks.[46] The Massachusetts and Ohio councils have separate, paid secretaries, although not completely full-time, and most of those in the higher level of accomplishment have the same thing or its equivalent in some way.

FINANCES

This brings us to what someone recently described as the $128 question—where do we get the money? New York and California, of course, have endowed their judicial councils generously, and without it their records would not be so good. The New York council is getting $40,000 a year from the legislature. The California council's appropriation of $20,500 a year covers the council's expenses and also expenses of judges assigned by it to service in other courts, and most of the money goes for the latter purpose, but the judicial council obviously gets a substantial working fund.

Not all of the judicial councils are so fortunate, and in fact many legislatures with appropriate millions every session for debatable uses tend to be downright parsimonious in doling out pennies to these organizations which have the possibility of saving the taxpayers tens or hundreds of thousands of dollars annually in court expenditures. The 1942 Handbook of the National Conference of Judicial Councils listed the legislative appropriations of two dozen judicial councils, and they ranged from the New York and California figures down to nothing at all for eight of them and as low as $500 a year for several others.

Financial support from other sources is available in some instances. The Michigan council has received help from the Cook foundation. The state bar sponsored councils get an allowance from the bar treasury. Law schools supply office space in some instances as well as research assistance. The fact that the Carnegie Corporation made a substantial grant some years ago to the National Conference of Judicial Councils should suggest that still other sources of financial support for state judicial councils are awaiting the ingenuity of some council member to discover them.

It is a mistake to suppose that without $40,000 a year nothing can be done. Some of the most effective councils have very modest incomes. The Michigan council gets only $1,500 a year from the legislature. Over a twenty-year period the Kansas council cost the state $47,300, averaging $2,365 a year. Surely nowhere else did the Kansas taxpayers get so much for their money.

SUMMARY AND RECOMMENDATIONS

1. *Organization.* Every state ought to have a judicial council. True, conditions vary from state to state, but wherever justice is administered through a system of courts, there is a place for the work of a judicial council. Also, every state ought to have a judicial conference, meaning a state-wide organization of all judges for both professional and social purposes. The judicial section of a state bar association may serve the purpose, but if it does not provide for a meeting, both business and social, at least

46. Saxe, *op. cit.*, note 20 (as of 1941).

once a year, attended by a large majority of the judges, it is not a substitute for a judicial conference and should not be so considered. Two meetings a year would be better.

The judicial council composed of all trial and appellate judges in the state is too large and unwieldy for effective work as a judicial council, except perhaps in the very smallest states, but the proper thing is not to disband it and start over, but to retain it as a judicial conference and go about supplementing it with a judicial council. It would be advantageous to have the two closely associated as they are in Maryland and Missouri, where the judicial council is identified with the executive committee of the judicial conference.

2. *Personnel.* If that is done, however, arrangements should be made to have it include others besides judges—perhaps by means of some device such as associate memberships. The council should include as many as possible of the following: Judges from all classes of courts in the state, including at least appellate, trial and inferior courts; members of the bar, preferably representatives of the organized bar rather than mere individual practitioners; chairmen of the legislative judiciary committees; the attorney-general; law school representatives; and laymen. The number should not exceed twelve, if possible. An executive secretary should be employed, full-time if possible. If not possible, arrangements should be made to get services as nearly equivalent thereto as possible, by joint arrangements with another organization or otherwise.

3. *Authorization.* The council may be chartered either by act of the legislature or by rule of the supreme court. The former is preferable because it lays a foundation for cooperation between council and legislature which should be one of the council's chief functions; also because in that way the legislature may feel more responsibility for maintaining the council financially than otherwise. If neither of these is feasible, a bar-sponsored judicial council is possible and worth having, although subject to some handicaps. The recommendation of the Massachusetts Judicature Commission is still useful as a pattern for a judicial council statute, as is also the American Judicature Society model act previously referred to.[47] Other good patterns may be found in the front pages of the current reports of the judicial councils of Michigan, New Hampshire, Massachusetts, Ohio, New York and West Virginia. Of these, the Michigan one is the simplest and probably the best.

4. *Functions and Program.* The council should assume as its first responsibility the gathering and publication of correct, intelligible and usable judicial statistics. So far as possible they should be coordinated with statistics gathered in other states. The statistics published by the California council, by the New York council, which has express legislative power to set up a system of judicial statistics and to require the necessary cooperation from court officials, and the Division of Procedural Studies and Statistics of the Administrative Office of the United States Courts, which has put more research and work into this subject than any other organization or agency, are the nearest thing to a guidepost now available in the effort to standardize and make reasonably uniform the statistics of the several states.

Beyond the gathering of statistics, the council should report at length and descriptively on the work of the courts, and the Kentucky provision for individual reports from judges is commended as offering hitherto unexplored possibilities in that connection. The council should function as a "ministry of justice" in advising the legislature with regard to judicial problems, both at the request of the legislature and on its own initiative. The judicial council should advise the rule-making authority, whether legislature or court, as to needed revisions in rules of procedure, unless some other continuing advisory body is already adequately performing that function. The council should receive complaints and suggestions regarding the judiciary from all sources and take appropriate action regarding them.

"Lay criticism," said Judge Dietzman of Kentucky, "is not often directed to the substantive law handed down by the courts, save, perhaps, in constitutional matters. It is sharply directed to our adjective law. To examine such criticism, to winnow the false from the true, to work out remedies for faults found, requires somebody trained to such work and equipped with needed information. What other body can do this labor more successfully or better than a judicial council? I know of none."

47. 5 J. Am. Jud. Soc. 107 (1921).

The National Bar Program Against Unauthorized Practice of the Law

By EDWIN M. OTTERBOURG

DESCRIBING his own suggestions for improvements in legal education as "A Better Mouse Trap,"[1] a distinguished teacher of law offers this as a solution for unauthorized practice of law. While questioning the wisdom of his analogy, the writer defers to Professor Bradway's experience and judgment as to matters of legal education. However, when reference is made to the national bar program for the prevention of unauthorized practice of law as amounting merely to "defensively holding a Maginot line in a cold war," it is high time that those interested in building "better mouse traps" be invited to look at what has already been done and is being done by the organized bar.

During the "Mauve Decade" the aphorism of the "mouse trap builder" may have had some foundation in reality. In our noisy times, however, people do not just beat paths to buy mouse traps however well constructed. Rather, they dash hither and yon, confused by the tolling of bells and sounding of tocsins and bugles of modern high-pressure advertising and publicity, and actually various kinds of mouse traps are being sold to owners of perfectly good cats.

Much that the learned professor suggests which may tend toward modernization and improvement of present methods of legal education is worthy of careful consideration. But it is a mistaken assumption that better legal education alone will impress the public to the extent of constituting a cure for unauthorized practice of law. This will not correct the lay invasion of the profession. It cannot offset the advertising and soliciting of legal business by laymen which reaches a public eager to "get something for nothing" or something cheaper but "just as good."

Conscious of all facets of the problem of unauthorized practice of law, the organized bar for sometime has carried on a broad and aggressive program, and when any one asserts that the bar has been "defensively holding a Maginot line in a cold war," he is grievously mistaken.

Four years ago in the 1945 report to the American Bar Association (Vol. 70 at p. 258) a complete program was presented for the suppression of unauthorized practice of law called "A Post War Plan," which included in it the

(1) education of lawyers;
(2) education of the public;
(3) education of those laymen whose businesses involved knowledge of law and its application.[2]

Nearly ten years ago (January 1940), placing practicality before theory in the prevention of unauthorized practice of law, the House of Delegates of the American Bar Association approved the recommendation of its Standing Committee on Unauthorized Practice of the Law of

"declining, except in unusual cases, on behalf of the Association to intervene as amicus curiae in litigations brought by local bar associations and *of endeavoring through full dis-*

EDWIN M. OTTERBOURG, a member of the New York bar, since 1914 has served on committees in relation to unauthorized practice of law. Since 1937 he has served and still is a member of the American Bar Association's committee and was chairman thereof from 1940-1943; is chairman of a similar committee of the New York County Lawyers Association; and is now serving as co-chairman of the National Conference Groups between the American Bar Association and the American Bankers Association —Trust Division; National Association of Real Estate Boards; National Association of Life Underwriters; and others. He has made frequent addresses on the subject of unauthorized practice of law in many parts of the United States and has contributed numerous articles in respect thereto.

1. John S. Bradway, "A Better Mouse Trap," 33 J. Am. Jud. Soc. 17 (June, 1949).
2. *Unauthorized Practice News* published by American Bar Association Standing Committee on Unauthorized Practice of the Law, Vol. XI, p. 37, et seq., reprinted in 29 J. Am. Jud. Soc. 85 (Oct. 1945).

cussion of unauthorized practice problems, to secure, wherever possible, the cooperation of national associations of laymen in the acceptance of principles relating thereto." (65 A.B.A. Reports, pp. 406, 444, 206)

Because such laymen have understood far better than the general public the extent of unauthorized practice of law that might obtain in their own fields and the dangers thereof, they welcomed meeting with representatives of the bar, and meetings have been held between the Association's Standing Committee on Unauthorized Practice of the Law and the following groups of business and professional men:

American Bankers Association—Trust Division, 59 ABA Reports 531, 536 (1934), 60 ABA Reports 529 (1935) etc.

National Association of Credit Men, 63 ABA Reports 323 (1938).

Commercial Law League of America, 63 ABA Reports 323 (1938).

Representatives of collection agencies operating throughout the nation, 62 ABA Reports 771, 775 (1937).

Association of Interstate Commerce Practitioners, 62 ABA Reports 771 (1937) & 63 ABA Reports 323 (1938).

National Association of Real Estate Boards, 60 ABA Reports 526 (1935), 64 ABA Reports 268, 277 (1939).

American Institute of Accountants, 62 ABA Reports 771, 773 (1937) & 64 ABA Reports 269, 270 (1939).

National Association of Life Underwriters, 60 ABA Reports 526 (1935), 64 ABA Reports 268, 277 (1939).

Committee Representing Casualty Insurers and Insurance Adjusters on Problem of Lay Adjusting, 63 ABA Reports 323, 326 (1938).

National Association of Broadcasters, 66 ABA Reports 153, 269 (1941).

Publishers of loose-leaf law services, 66 ABA Reports 150, 269, 275 (1941).

Publishers of law books, loose-leaf law services, etc., 72 ABA Reports 210 (1947).

There are functioning permanent conference groups of lawyers and laymen organized on the initiative of the American Bar Association as follows:

Conference Committee on Adjusters, 64 ABA Reports 278 (1939).

National Conference with American Bankers Association-Trust Division, 65 ABA Reports 206 (1940).

National Conference Group with National Association of Real Estate Boards, 67 ABA Reports 218 (1942).

National Conference Group with American Institute of Accountants, 69 ABA Reports 447 (1944).

National Conference of Lawyers and Life Underwriters, 70 ABA Reports 119 (1945).

Resulting from all this, statements condemning unauthorized practice of law and clarifying the respective positions of lawyers and laymen in specific fields have been voluntarily agreed to by the leaders of the lay groups and organizations involved.[3]

As one by-product of the Association's work, laymen are today advertising "Consult Your Own Lawyer" (69 ABA Reports 448), and there are many other examples of laymen's voluntary cooperation with the bar toward the elimination of unauthorized practice of law.[4]

While serving as Chairman of the American Bar Association's Standing Committee on Unauthorized Practice of the Law, the writer was able to report that

"* * by far the best results are obtained by this conference method through educating lay groups in the necessity for obtaining counsel where legal questions arise".[5]

Declarations of principles adopted by these conferences were circulated widely, not merely through the channels of the American Bar Association, but were willingly forwarded to the members of the various lay groups through their own organizations.

Employees of most of the banks and trust companies, the insurance companies (fire, accident, casualty and life), the members of real estate boards, and the life insurance agents, among others, throughout the United States, have received copies of these documents or have been made aware of their contents.

Thousands upon thousands of laymen have been made aware of what constitutes unauthorized practice of law and are cooperating to limit and end it in their own fields of business activity.

---

3. Collection agencies (62 ABA Reports 771,775,786 (1937)), 63 ABA Reports 327 (1938), 64 ABA Reports 274 (1939)); Lay Insurance Adjusters (64 ABA Reports 278 (1939)); Life Insurance Underwriters (64 ABA Reports 271 (1939), 65 ABA Reports 211 (1940); Loose-leaf services (66 ABA Reports 274 (1941), 67 ABA Reports 221 (1942)); Broadcasters (66 ABA Reports 153, 269 (1941)); Trust companies (66 ABA Reports 274,277 (1941)); Real Estate Brokers (67 ABA Reports 224 (1942)), 68 ABA Reports 132-141 (1943)); Accountants (69 ABA Reports 189 (1944)); Law Books, etc. (72 ABA Reports 210 (1947)).

4. 69 ABA Reports 264,265,448 (1944); 70 ABA Reports 260 (1945); 71 ABA Reports 209 (1946).

5. 69 ABA Reports 447-448 (1944).

The concurrence of the best thinking of acknowledged representatives of lay groups with representatives of the bar on these matters has brought about general acceptance on a nation-wide basis of the underlying principles applicable to the prevention of unauthorized practice of law. Numerous similar conference groups organized on state-wide or county levels are functioning between bar associations and groups of laymen. This work is now going on actively and successfully.

We will never reach Utopia in this field, but this part of the campaign for the education of laymen should be known to and supported by lawyers everywhere, whether in or outside of bar associations, and law schools should acquaint their students with the available literature on the subject.

Whenever the public has been shown the immense public contributions of the organized bar, which include legal aid, the establishment of referral bureaus, maintenance of committees on ethics and discipline, and the proper selection of judges, to say nothing of the constant efforts toward improving practice and procedure and uniform laws, it well understands that the efforts to suppress unauthorized practice of law are only a necessary part of the bar's public service.

Acquainting the public with the bar's services for the general welfare has been part of every bar association's program. The committees on unauthorized practice of law throughout the nation have been, in fact, missionaries in the field of good public relations of the bar and in every part of the country have emphasized:

(1) The dangers of being one's own lawyer;
(2) The danger of relying upon legal advice from an individual layman or corporation who has an ulterior interest;
(3) The necessity for competent and qualified legal advice;
(4) The public protections existing when advice is received from a lawyer as distinguished from the total lack of them when received from unauthorized practitioners.

Bar committees on public relations have approved and sponsored radio programs and even television shows, and in the article in the JOURNAL immediately preceding the "Mouse Trap" article many other examples of active public relations work may be found.[6]

It is amazing that some lawyers and writers on law seem unaware of all of this activity in support of a national bar program for the prevention of unauthorized practice of law and how successful have been the efforts for public education. Indeed, the public seems far in advance of such lawyers and writers, for the statutes enacted in nearly every state declaring it to be public policy that only lawyers shall practice law, could never have been passed solely in the selfish interest of the bar. These were enacted and are being enforced because the community supported and continues to uphold the sound public policy which requires them.

The courts have recognized the dangers of unauthorized practice of law and enforced the law by innumerable decisions.[7] As officers of the court performing public service, the organized bar need not apologize for, nor be afraid to acknowledge, its necessary part in the enforcement of the law.

The organized bar does not tolerate those members of its own profession who, for reasons of personal gain, are willing to aid and abet unauthorized practice of law. Canon 47 of the American Bar Association reads as follows:

"No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."[8]

Any lawyer who permits his services to be furnished by an intermediary and who renders services ostensibly to a client thus secured but actually in the interest of the intermediary, is of course completely insensitive to what is contemplated in the profession by the relation of attorney and client.[9]

Disappointing as is the negative attitude of some writers toward the successful efforts of the organized bar in relation to the problems here discussed, we find in addition an unthinking acceptance in the same quarters of the

6. See Winters, "Institutional Advertising for the Bar" 33 J. Am. Jud. Soc. 11 (June, 1949).

7. Cases collected in 36 ALR 533; 73 ALR 1327; 81 ALR 292; 84 ALR 749; 94 ALR 359; 100 ALR 226; 105 ALR 1364; 106 ALR 548; 111 ALR 19; 114 ALR 1506; 125 ALR 1173; 151 ALR 781; 157 ALR 282, 522.

8. ABA Canons of Professional and Judicial Ethics.

9. Litigations are now pending in Arizona, Texas and Minnesota which in part involve the practice or business of furnishing lawyer's services incident or corollary to a business.

arguments which have been interposed unsuccessfully by laymen in many unauthorized practice cases. For example, there is the wholly specious theory that in modern times the practice of law has largely become merely the application of legal techniques in the solution of specific problems and that, therefore, in any special field it should be possible with safety to learn and apply merely legal techniques peculiar to that special field. Based on these false premises, laymen have been arguing unsuccessfully that they are just as competent, if not more so than lawyers, to give legal advice in this or that specialized field of law with which their business has made them somewhat familiar.

Probably some law students, and perhaps even some law schools, would like to feel that expertness as "specialists" can be obtained by a form of short-cut. However, there are some things no one knows, not even a young man. No system of successful education can be based on the "quicksands of adolescent defiance" of established verities which have been time-tested. No theory could be more erroneous than a notion that legal education can be so condensed that students, if given special training in a branch of law, are equipped thereby, immediately upon graduation or the receipt of a degree, to practice as "specialists" in that field.

Doctors of medicine before sitting for extensive examination to qualify as specialists, must not only have graduated from their four year medical school course, but in addition have actual apprenticeship training in their specialty for a period of not less than three additional years.[10] The right to practice in a legal specialty can be similarly safeguarded, to avoid the possible danger that the public, in addition to being imposed upon by unqualified lay quacks in the law, may be subjected to incompetent ministrations by authorized legal dilettantes.

Professor Bradway writes that "the term 'breadth' applies to all fields of law" but "'depth' is used to emphasize the need for a specialist to know everything in his field" and he admits that "A course in depth contemplates going beyond the printed page to the bottom of the barrel." But among his many admirable suggestions he does not include in the "barrel" actual practice as a prerequisite before the neophyte can represent himself as a "specialist."

The theory that modern practice of law should be merely an adeptness in the techniques of various specialties, which in itself denies the "seamless web" of the law, is the identical argument advanced by laymen and corporations who wish to render legal services to the public in the special field of law impinging on their business. Any form of "short-cutting" legal education whereby laymen may consider and represent themselves as "experts" or "specialists" or "counsellors" in some branch of law in which they would like to practice is naturally highly favored by them. But it is astonishing that such theories have received misguided support by writers on legal topics who dogmatically assert that "the proper forum for competing skills is the market place.[11]

Laymen, when in the "market place", are not limited by any rules or regulations as to the extent to which they may misrepresent their "expertness", but the fact is that lawyers may not compete in the advertising that takes place in the "market place" without violating sound ethical rules, and the salutory principle that the relation of attorney and client should not be the result of high-pressure advertising or solicitation.

There may always be a gullible section of the public which will at its peril accept "something for nothing" or something "just as good" in the form of legal services; unauthorized practitioners of law know "it pays to advertise". Wholehearted and vigorous support should be given to the national bar program, part of which is the protection of the public against unauthorized practice of law. What it is has been defined in the following language:

"The public, far more than the lawyers, suffers injury from unauthorized practice of law. The fight to stop it is the public's fight. No man is required to employ a lawyer if he does not wish to. But every man is entitled to receive legal advice from men skilled in law, qualified by character, sworn to maintain a high standard of professional ethics, and subject to the

10. In surgery, the doctor must have a total of five years' additional training and experience by either not less than one year's internship and four years' training in an institution accepted by the Specialty Board or three years of hospital residence training and two years of actual practice in surgery.

11. 56 Yale L. J. 1438, 1448 (1947).

control and discipline of the court. Not only this, he must be served disinterestedly by a lawyer who is *his* lawyer, not motivated or controlled by a divided or outside allegiance.

"Unauthorized practice of law is the attempt by laymen and corporations to make it a business for profit of giving the public, as a substitute, the services of unqualified and unprofessional persons, or to employ and furnish for profit, directly or indirectly, the services of lawyers who may be willing to sabotage professional ethics in order to secure employment.

"In either case, the public is cheated; either by receiving incompetent and unethical advice, or by being served by lawyers who are not disinterested, whose real client is not the person advised but the entrepeneur furnishing the services.

"In either case, the result is the breaking down of the standards of professional ethics or their entire absence, and a direct interference with the administration of justice and the protection of the public in the courts.

"Whenever the public and business men understand what is here involved, then cooperation and support are accorded to the bar".[12]

No support should be given directly or indirectly to the theory advanced by laymen that branches of the law are capable of such specialization that lay advice on a question of such law is just as good or better than the advice of a lawyer.

Unauthorized practice of law can be checked, controlled, and eliminated without the necessity of the bar lowering its standards either in the field of education or in the field of professional conduct.

Unthinking criticism of one aspect of the bar program in order to advance another aspect weakens the whole program. This not only puzzles the public but it gives direct encouragement to those who would undermine the legal profession. For Professor Bradway to ignore the entire program and to write "the most obvious characteristics of the present program against the unlawful practice of the law is its negative quality" demonstrates only that he cannot claim to be a "specialist" in the bar's program. He can hardly hope to advance the cause of better legal education which he advocates, by minimizing or deprecating the realistic and successful program undertaken by the organized bar in the field of unauthorized practice of law. Not so long ago, in addition to the American Bar Association's committee, there were approximately 400 committees of state and local bar associations realistically dealing with problems of unauthorized practice of law. The Chicago Bar Association's committee consisted of from 50 to 75 members and the New York County Lawyers Association's committee consisted of 21 members; the number of men serving on such committees throughout the country and giving freely of their time and efforts is eloquent testimony of the whole-hearted support which their efforts are receiving both from the public and the bar.

The bar program has been successful to a marked degree and this article only gives a small indication of the real progress that has been and is being made. It is somewhat disappointing, but not the least discouraging, to find among our own ranks in the law schools and among the student body those who are uninformed and critical of the program. The law schools could help by educating their students and their own faculties as to what is actually being done and has been accomplished for the good of both the public and the profession by the organized bar, and law students upon graduation should be encouraged to join bar associations and to participate in their work.

12. *Bump* v. *District Court of Polk County*, 233 Iowa 623, 5 N. W. (2) 914 (1942).

Reply to Mr. Otterbourg

To the Editor:

I appreciate your courtesy in permitting me to make two brief comments on Mr. Otterbourg's article in this issue of the JOURNAL.

All of us are under obligation to Mr. Otterbourg for painstakingly bringing together in a single readable article the admirable record of achievement of the Committee on Unauthorized Practice of Law of the American Bar Association. More particularly, he has conferred a personal favor on me by his constructive comments in my earlier article. My appreciation is genuine.

I regret that Mr. Otterbourg seems to construe my article as an attack on the program his committee. It has never been my intention to attack the program of his committee. Insofar as it is expressed in the report for the year

1945, to which he makes reference, I agree with it. He and I start from the same point—a sincere desire to do away with the unauthorized practice of law by laymen. If our approaches to the problem are somewhat different, the difference can be explained readily on the basis of our divergent situations. Mr. Otterbourg sees the problem from the center looking out; from the metropolitan background in which he lives; on the national level at which the program was conceived. On the other hand, I come in contact with the situation near the periphery, looking in; from the background of a small city in a predominantly rural state; on the local level. I gather that Mr. Otterbourg is inclined to rely rather upon organization to meet the challenge of the layman. My own preferences are for an increase in quality of the lawyer's professional produce—a *better* mousetrap.

In my article, I emphasized my dissatisfaction with a "negative" approach and my desire for an "affirmative" program. I submit that the Committee on Unauthorized Practice of Law does not make a negative approach to the problem and that in consequence, my objections do not apply to it. I urge further that if my article has any relation to the program of the Committee, the word used to describe that relation should not be "attack" but rather "implementation."

Mr. Otterbourg refers in his article to the Committee's Report for 1945 (70 Reports ABA 257). I shall quote briefly and I hope fairly and in context from that report.

The report frankly admits that since Pearl Harbor, unauthorized practice of the law in the United States is on the increase.

"Close observers of the activities of unauthorized practitioners of law in the United States realize only too well the extent to which they have expanded since Pearl Harbor."

It expresses dissatisfaction with efforts to enjoin lay encroachments:

"Even in states where favorable decisions have been obtained before the war enjoining such practices, the problems of policing the violators was hopeless."

It proposes—not more injunctions—but a three point new affirmative program including:

Education of Lawyers

Education of the Public

Education of Groups whose Business Involves the Knowledge of Law.

The first point is naturally of primary interest to me. Here the Committee praises the "Practicing Law Institute of New York" and comments in contrast that "the law schools sat idly by." It urges new law school courses and concludes this section with the words:

"Supported by the law schools, these courses could be improved and extended to the advantage of the bar and to the service of the public."

May I repeat that my article was not an attack upon but rather an implementation of a part of the program of the Committee. I have great respect both for Mr. Otterbourg and the Committee.

JOHN S. BRADWAY

Durham, N. C.

The Timing of the Charge to the Jury

By RICHARD HARTSHORNE

THE suggestion was made in an article in the August JOURNAL that the long-standing practice, both in England and in the great bulk of the jurisdictions in the United States, of charging the jury at the end of the case, should be changed by having the charge precede counsel's summations. For this radical change, known to but a handful of jurisdictions, substantially two arguments are presented. The first is the alleged difficulty faced by counsel in not knowing the principles of law applicable to the case before they sum up. The second is that, with the judge's charge following counsels' arguments, the jury when they retire "have to restore themselves to the mood of the controversy in which they should properly be" when they "go into conference." These arguments point to the effect of the charge (1) on counsel; (2) on the jury.

Judge Hartshorne is judge of the Essex County Court, Newark, N. J. See Blatt, "Judge's Charge to Jury Should Precede Arguments of Counsel," 33 J. Am. Jud. Soc. 56 (Aug., 1949).

Since the purpose of the charge to the jury, whenever it occurs, is obviously to aid the jury in the correct decision of the case, the effect of the charge on the jury itself is clearly of primary importance; that on counsel of secondary importance.

The form of the charge to the jury, as distinguished from its timing, is, unfortunately, not universal throughout the states. But we disregard, as does the earlier article, those state jurisdictions which restrict the judge's charge to a mere delivery of written requests, submitted by counsel on abstract principles of law, and we consider the matter as it affects those states and the federal courts where "the common law concept of the function and authority of the trial judge" exists and he "instructs the jury orally as to the law of the case, and he may advise the jury as to the facts by summarizing and analyzing the evidence and commenting upon the weight and credibility of the evidence or upon any part of it, always leaving the final decision on questions of fact to the jury." (*Handbook*, Section of Judicial Administration, American Bar Association, 1949).

The prime question thus is the comparative effect upon the jury of having them retire with the final words in their ears of the unbiased judge or of contentious counsel. That the latter suggestion will bring them into the jury room "in the mood of controversy" is not only admitted in the above article but urged as the mood "in which they should properly be." The question thus is whether we want our jurors themselves to be controversial in their conference, or to consider the evidence in an unbiased and judicial frame of mind. If it is the former, then no more need be said. For we then will have expressed our desire to have the rights of the parties decided in the contentious, emotionally inflamed and biased atmosphere naturally created by counsel.

But that this is not conducive to true justice seems so obvious as to require no argument. Surely it is preferable for these, the final arbiters of right and wrong among our fellow citizens, after having been pulled hither and yon by the partisan and inflammatory arguments of counsel, to have presented to them a clear, concise, unemotional and unbiased statement of the facts, with the opposing claims of the parties in that regard, together with a concise statement of the principles of right and wrong applicable thereto. Thus the equilibrium, fair-mindedness and judicial attitude of the jurors will be restored, the issues in question pointed up, and they can retire to their jury room to consider their verdict as true judges, which in fact they are.

Since this covers the major purpose of the charge to the jury, it would seem hardly necessary to advert to the relatively unimportant point of the effect of the timing on the charge on counsel. But, as to this, those with long experience in the trial of jury causes know full well that in 99 cases out of 100 it is the dispute on the facts which gives rise to the litigation, there being little real question on the relatively simple principles of law involved. Consequently, counsel run little risk of being embarrassed by a correction from the court if they interline in their summation an allusion to the principles of law, particularly since in so doing they customarily mention that the judge has the final word in that regard. And in the one hundredth case, which perchance is of a relatively unusual character in its legal principles, these principles are customarily agreed upon between counsel and court long before the summation, especially where pretrial procedure is used, either by trial briefs, on motion, or during the presentation of the evidence itself. Furthermore, it is quite proper, if deemed desirable for the enlightenment of the jury, for the judge in such a case to confer with counsel before their openings and to give the jury a preliminary charge on any unusual principle of law. In fact, Indiana by court rule recently has made this mandatory.

In short, then, the main purpose of the charge to the jury is to clarify for them the real issues of fact involved and the principles of law applicable thereto. That the jury may not be diverted therefrom by the partisan contentions of astute counsel, nor, through counsel's contentious attitudes, become themselves contentions and partisan, it would seem clear that, after having been the object of these partisan contentions on summation, they should be restored to a truly unemotional, unbiased and judicial state of mind by the calm, clear, common-sense charge of an impartial judge before they themselves retire, as judges, to do justice between the parties.

Ohio, Colorado, Columbus, Ohio, and Beverly Hills, California Bar Associations Win A.B.A. Award of Merit

By F. M. SERCOMBE

The State Bar Associations of Ohio and Colorado, and the local bar associations of Columbus, Ohio, and Beverly Hills, California, were recipients of the annual awards of merit presented by the Section of Bar Activities of the American Bar Association at the 1949 meeting held at St. Louis, Missouri.

OHIO STATE BAR ASSOCIATION

The Ohio State Bar Association won the award to a large state bar association upon the wide range and scope of its activities and achievements of the past year.

These included a weekly publication of the *Ohio Bar* which carries to members of the Association news of the Association's activities, syllabi of opinions of the Attorney General, a digest of Ohio propositions of law and opinions currently published in all Ohio advance sheet publications, news of members of the association, and activities of local bar associations, advance sheets of all Supreme Court opinions within five days after pronouncement, and advance sheets of all official court of appeals opinions. It is claimed by the Ohio lawyers that this publication is one of the greatest contributions to judicial reporting from the standpoint of consolidation of material, elimination of duplication, cost to the lawyer, and saving of office space that has been accomplished by any contemporary publication.

Other activities included a legislative program which was carried on vigorously and was generally successful, also, creation of a local bar association activities committee to bring about closer cooperation between the Ohio State Bar Association and the various local associations throughout the state to promote local bar associations activities and to serve as a clearing house for information of interest to local bar associations in Ohio. The activities of this committee included the compilation of a local Association Bulletin issued approximately every three weeks, and mailed to all local bar association presidents, secretaries, and program committee chairmen. The committee sponsored two meetings for executives of local bar associations with discussions of appropriate subjects. The committee also sponsored a local bar association certificate of merit similar to that of the American Bar Association contest.

Practicing law institutes were inaugurated and district meetings were held in some 15 districts of the state.

Committees on unauthorized practice and American citizenship were also active. The latter committee participated actively in visits of the Freedom Train, inaugurated the annual presentation of citizenship award to a citizen of Ohio who has been outstanding in the promotion of Americanism and citizenship during the year, assisted the local associations in formation of speakers' bureaus and preparation of material for presentation to schools and teacher organizations, and participated in naturalization hearings and ceremonies. A committee on international relations was created, the functions of which were to disseminate information on international matters to the lawyers of Ohio and to consolidate the views of the lawyers and present them to the Congress and the President of the United States. Other committees too numerous to mention here and the Council of Delegates carried on an active program during the year securing most commendable results.

COLORADO BAR ASSOCIATION

Among the smaller state bar associations, the award was won by the Colorado association based on its program of public relations, judicial reform and bar association activities.

The Association embarked upon a radio program which made a radical departure from most institutional advertising. It consisted of a dramatic sketch with use made of all radio effects. Each sketch told some story and made the point that the commonplace things in life as well as the involved transactions require the services of a lawyer.

Public appearances were made by panels of

Mr. Sercombe is a member of the Portland bar, secretary of the Oregon State Bar, and was chairman of the Committee on Award of Merit of the Section of Bar Activities of the American Bar Association during the past year.

speakers before various luncheon clubs in support of the judicial reform program and speakers were furnished to various high school groups to speak on many aspects of the legal profession for the purpose of acquainting the high school seniors with the economics, responsibilities, and duties of the legal profession. In support of the judicial reform program, the Association published a pamphlet entitled "Take the Courts Out of Politics—Take Politics Out of the Courts" and distributed it widely over the state. There was also published and distributed through the clearing house association, state bankers association, libraries and law offices, a pamphlet dealing on wills.

For the benefit of the profession generally, institutes were held in cooperation with local bar associations at several points throughout the state. A minimum fee schedule was prepared and adopted. Dues were increased so as to permit the employment of a full time executive secretary. In addition to its monthly magazine, the Association publishes the advance sheets, which reach all lawyers in the state within one week from the announcement of the decision and also publishes a loose-leaf service dealing with rules, decisions, court interpretations of the rules of civil procedure, recent tax cases and real estate standards.

COLUMBUS BAR ASSOCIATION

As in 1948, the award to large local bar associations was won by the Columbus, Ohio, bar association, which submitted a long list of activities in the fields of civil liberties, investigation of the municipal court, Ohio legislation, courts generally, public relations and activities for the benefit of the Association. Noteworthy among these activities was the investigation of claims of brutality by the members of the Columbus police department to persons under arrest, also an investigation of alleged faults and deficiencies of the municipal court, its personnel and procedure.

In the field of legislation, the Association studied and reported on proposed legislation connected with the administration of justice or otherwise of special concern to lawyers as lawyers and advised and consulted thereon with legislators and their committees. The Association also polled the bar and reported to the public on qualifications of candidates for Judgeships and prepared a handbook for grand jurors, inaugurated a speakers' bureau to furnish speakers to interested organizations qualified to discuss a wide range of subjects, developed a plan for instructing candidates for notarial commissions and examining them on qualifications, continued the lawyers reference service, held two law institutes, also an institute for legal secretaries covering office comportment and dress, telephone techniques, shortcuts, and other matters of interest to legal secretaries, operated an employment service for temporary part-time and full-time stenographers and secretaries on a no-charge basis, prepared and distributed a bar directory, and in many ways was of unusual and noteworthy service to the bar and the public of the City of Columbus.

BEVERLY HILLS BAR ASSOCIATION

This year an award was made in division IV to small bar associations and it was won by the Beverly Hills Bar Association. Its entry disclosed a program of monthly luncheon meetings featuring programs conspicuous for their public and professional interest and concern. The local association also cooperated with the State Bar of California to maintain local bar activities in harmony with the State Bar program and likewise cooperated with committees and sections of the American Bar Association in such manner as to strengthen materially the local bar program.

In the field of continuing education two lecture courses were offered by the Association in cooperation with the State Bar of California and the University of California, both courses designed to keep the lawyers informed of current trends of judicial decisions and in trial procedure. A placement service was established for the purpose of placing legal secretaries and attorneys in members offices without cost, and group insurance benefits with reduced costs were provided for members. Sole resposibility for community chest contributions by association members was assumed, and in general civic activities of the members have been pronounced and have brought prestige and honor to the Association.

Tulane University Offers New Law-Science Courses

A law-science program has been established at Tulane university to bring about an effective integration between the fields of law and medicine on the graduate and undergraduate levels, Dr. Rufus C. Harris, Tulane president, has announced.

It will be directed by Dr. Hubert Winston Smith, former professor of legal medicine at the University of Illinois, who has been named research professor of law and medicine, Dr. Harris said. He will serve also as professor of law and professor of legal medicine in the college of law and school of medicine, respectively, the two divisions in which the program will operate at once.

The program, effective Sept. 15, is the result of protracted deliberation by the two schools in finding effective measures to bring the legal and medical professions into a tangible, productive working relationship, Dr. Harris said.

New courses and seminars are being planned which will be devoted to more complete training of trial lawyers in the science of proof, handling of personal injury litigation, and in the elements of legal psychiatry. The latter will be devoted to giving the lawyer insights into behavior problems needed to meet the demands of daily practice.

Long-range research plans call for projected developments in clinical legal medicine, legal pathology, and scientific crime prevention and detection, Dr. Harris said.

Dr. Smith, who holds degrees in both law and medicine from Harvard, said it is hoped that clinics will be established to aid law enforcement agencies and at the same time provide laboratories where research and teaching may be carried on in the development of cooperation between law and science.

Announcement of the law-science program is one of three major developments in law at Tulane this year. On Oct. 1 a comparative law institute was established for studies and research in civil and common law. In the school of medicine, Dean Maxwell E. Lapham announced a course in legal medicine has been established, designed to acquaint undergraduates with chief connections in which medical science may help in the administration of justice and the solution of social problems. A new course in advanced evidence has been added to the curriculum of the college of law, dealing with the functional use of the rules of evidence and of the science in proof in civil and criminal litigation, Dean Paul Brosman said. Next Spring, he added, it is hoped to add a course in medical litigation.

"It has been estimated," Dr. Smith revealed, "that today up to 80 per cent of all legal controversies involve medical-legal problems, which can be solved only by drawing upon knowledge of law and medicine simultaneously. As part of the course now being planned, students will be given basic instruction in medical science in a manner appropriate to their needs and integrated with specific legal problems which constantly confront courts and lawyers."

It is planned also to offer a course in medical-legal aspects of behavior problems, devoted to training of law students in basic principles of psychiatry as related to civil and criminal litigation.

Legal Profession Commemorative Stamp Proposed

A commemorative stamp in honor of the legal profession, to appear in connection with the Survey of the Legal Profession, is proposed in a bill recently introduced in Congress by Representative Arthur G. Klein of New York. Plans for the stamp were drawn up by a committee headed by Albert P. Blaustein of New York City, to give recognition to the Survey and to pay tribute to the part played by the profession in the preservation of liberty, justice and democracy.

A stamp in honor of the medical profession and the work of the American Medical Association and bearing a reproduction of the painting "The Doctor" by Sir Luke Fildes was issued in 1937.

It is proposed that this one bear the likenesses of Charles Evans Hughes, Oliver Wendell Holmes, Jr., Louis D. Brandeis and Benjamin N. Cardozo. A commemorative stamp for Harlan Fiske Stone appeared last year.

Texas and Milwaukee Win Junior Bar Awards

Junior bar organizations of the state of Texas and the city of Milwaukee received awards of merit from the Junior Bar Conference of the American Bar Association in St. Louis last month. Honorable mention was given to the state organizations of Michigan, Connecticut and the District of Columbia, and to local groups in Dallas, Texas, and Hennepin County (Minneapolis), Minnesota. W. Carloss Morris, Jr., of Houston, Texas, was elected chairman of the Conference.

Paragraphs

LAWYER POPULATION of the United States now stands at 169,242, according to a report of the Survey of the Legal Profession. This is a decrease of about 10,000 from the 179,567 reported in the 1940 census.

NEW YORK has the most lawyers, with 28,333, and Delaware the least, with 248. Illinois has 13,983, and California 10,594. Massachusetts, ranking forty-fourth in area, is seventh in lawyer population, with 6,885, while Nevada, sixth largest in area, is forty-seventh in lawyers, with only 255.

"COURT IS IN SESSION" is the title of the Philadelphia legal television show which opened on October 15 and will appear regularly from nine to ten Saturday evenings over WCAU-TV. The program originates in a City Hall courtroom, and leading Philadelphia lawyers and judges will appear on it along with professional actors in fictitious trials.

THE AMERICAN ARBITRATION ASSOCIATION will be banned from Nebraska if a suit filed by the Nebraska Bar Association is successful. The Association is accused of unauthorized practice of law, solicitation of legal business, and usurping the power and jurisdiction of the courts.

PRE-TRIAL PROCEDURE in North Carolina became compulsory on October 1, in every docketed civil action except uncontested divorce suits and special proceedings.

The Literature of Judicial Administration

BOOKS

The series of essays on the administration of criminal justice published throughout the last school year in the *DICTA* column of the *Virginia Law Weekly* (ambitious University of Virginia law student newspaper described in an article in the JOURNAL last April) has been assembled and published in permanent book form, copies of which are for sale at a price of one dollar. The *Law Weekly's* founder and last year's editor, Edgar Allan Jones, Jr., has announced that profits from the sale of the book, if any, will be donated to the American Judicature Society.

The JOURNAL recommends the book to its readers, not so much for the latter reason (having suggested instead that any surplus be put in a reserve fund to assure continuity of the venture) as to encourage and draw attention to a most praiseworthy activity on the part of these Virginia law students, and to promote as wide a distribution as possible of this excellent symposium on criminal justice. The list of authors is a roll call of great names in criminal law and criminology, and their subjects encompass the field from a variety of angles. Anyone interested in the administration of justice in criminal cases, or who agrees that these students deserve encouragement in such a project, cannot do better than send an order for one or more copies at a dollar each to the *Virginia Law Weekly*, Clark Hall, Charlottesville, Virginia.

With Thomas H. Beddall, Jr., as editor-in-chief, and Stanley C. Morris, Jr., as *DICTA* editor, the *Law Weekly* got off to a good start last month on the current year's study of divorce and family relations. The first two essays on this subject were "Anthropologist Looks at Our Marriage Laws," by Margaret Mead, noted authority on social anthropology, and "History and Principles of Jewish Family Law," by Rabbi Boaz Cohen of the Jewish Theological Seminary. Further studies in this field by prominent legal and social authorities will appear every week for the remainder of the school year. The plan is to collect and publish them next summer in a second annual volume, but some of our readers who are sufficiently interested might consider it worth the four-dollar price to subscribe to the *Law Weekly* and get them each week during the year.

ARTICLES

"The Juvenile Court at the Half-Century Mark," by Marjorie Bell. Focus (National Probation and Parole Association), September, 1949, pp. 129-134, 149-152.

"The Court and the Child," by Gustavus Loevinger. Focus (National Probation and Parole Association), May, 1949, pp. 65-69, 89-91.

"The Juvenile Court and Delinquent Parents," by George W. Smyth. Federal Probation, March, 1949, pp. 12-17.

"Approved Instructions to Juries in Nevada Criminal Cases," by Harlan L. Heward. Nevada State Bar Journal, July, 1949, pp. 149-236.

"The Trial and Crucifixion of Christ," by T. M. Cunningham. Georgia Bar Journal, August, 1949, pp. 14-22.

"Local Bar Association Activities," by Paul B. De Witt. Ohio Bar Association Report, August 29, 1949, pp. 311-316.

New Members of the American Judicature Society

Delaware
Wilmington
ALEXIS I. DU P. BAYARD

District of Columbia
Washington
DAVID GINSBURG
ARCHIBALD KING
JAMES D. MANN
ALEXANDER WILEY

Illinois
Chicago
COLIN O. HIGGINS

Indiana
Indianapolis
JAMES L. MILLER
Terre Haute
N. GEORGE NASSER

Maryland
Baltimore
MORGAN M. BUCHNER
WALTER SCOTT CALWELL
WILLIAM J. KANE
LESLIE E. MIHM
HERBERT C. MOORE
G. KENNETH REIBLICH
Cumberland
C. WILLIAM GILCHRIST
Silver Spring
EINAR CHRISTENSEN

New Jersey
Trenton
MITCHELL REESE

New York
New York
BERNARD SCLOVE

North Carolina
Tarboro
LAWRENCE H. FOUNTAIN

Ohio
Columbus
WALTON GLOVER ALCORN
Dayton
PAUL J. BUCKLEY

Texas
Houston
RICHARD W. ADAMS

Virginia
Alexandria
HOMER A. WALKUP
Arlington
THOMAS R. BARTLETT

West Virginia
Beckley
DOUGLAS BOWERS
CLAY S. CROUSE
JAMES K. EDMUNDSON
HERBERT STANSBURY
Bluefield
HAROLD F. PORTERFIELD
LUTHER G. SCOTT
Buckhannon
WILLIAM T. O'BRIEN
U. G. YOUNG, JR.
Charleston
FLEMING N. ALDERSON
A. S. ALEXANDER, JR.
PHILIP ANGEL
LON BARRINGER
CLARENCE J. BENSON
JOHN N. CHARNOCK
STANLEY E. DADISMAN
A. V. FITZWATER
CHARLES W. GOOD
CULLEN G. HALL
F. DUANE HILL
WILLIAM T. LIVELY
SAMUEL D. LOPINSKY
CHARLES M. LOVE
ROBERT MERRICKS
BEVERLY L. MICHIE
G. S. MILLHOUSE
HAROLD H. NEFF
J. CAMPBELL PALMER, III
LOUIE A. PATERNO
E. FRANKLIN PAULEY
WAYNE A. RICH
CHARLES RITCHIE
LILLIAN S. ROBERTSON
HERMAN E. RUBIN
W. GOODRIDGE SALE
EMERSON W. SALISBURY
ROY S. SAMMS, JR.
WALTON SHEPHERD, JR.
PHILIP R. SIMMS
R. K. TALBOTT
HIRAM G. WILLIAMSON
MARRS WISEMAN
Charles Town
FRANK J. BECKWITH
Clarksburg
ARCH M. CANTRALL
WALLACE B. GRIBBLE
WILLIAM P. NOTTINGHAM
W. G. STATHERS
Clay
B. C. EAKLE
Elkins
STANLEY BOSWORTH
Fairmont
FRANK R. AMOS
RUSSELL L. FURBEE
DOMINICK J. ROMINO
ROLEIGH LEE STUBBS
Fayetteville
H. E. DILLON
WILLIAM R. LAIRD
Franklin
WILLIAM MCCOY
Harrisville
THOMAS J. DAVIS
Huntington
HARRY R. ANGEL
EDWARD H. GREENE
THOMAS WEST PEYTON, IV
TOMKIES & TOMKIES
ARDEN TRICKETT
THOMAS WEST
Kingwood
MILFORD L. GIBSON
Iaeger
L. R. MORGAN
Lewisburg
JOSEPH M. HOLT
Logan
E. PAUL CHAMBERS
Moorefield
HARLAN M. CALHOUN
CHARLES S. ARMISTEAD
CHARLES G. BAKER
STANLEY R. COX
GEORGE R. FARMER
CHARLES H. HADEN
EZRA E. HAMSTEAD
WILLIAM FRENCH HUNT
WILLIAM CORBLY LEMLEY
MARLYN E. LUGAR
ALBERT SHUMAN
Moundsville
EVERETT F. MOORE
Mullens
FREDERICK T. KINGDON
Oak Hill
J. M. ELLIS
Parkersburg
DORR C. CASTO
JOHN R. HICKEL
H. O. HITESHEW
WILLIAM BRUCE HOFF
Philippi
I. RAYMOND MURPHY
Pineville
ROBERT BAILEY, JR.
Point Pleasant
GEORGE G. SOMERVILLE
Richwood
BROOKS B. CALLAGHAN
Romney
RALPH W. HAINES
Spencer
WILLIAM S. RYAN
Summersville
BENJAMIN P. BROWN, JR.
Wayne
J. FLOYD HARRISON
Webster Springs
E. V. MORTON, JR.
Welch
J. D. ASHWORTH
ALBERT A. BARLEY
THORNTON G. BERRY, JR.
HOAGLAND FRENCH
SAMUEL SOLINS
DAN J. F. STROTHER
West Union
CLAY D. HAMMOND
Wheeling
KENT B. HALL
ALBERT W. LAAS
CHARLES MCCAMIC
RUSSELL G. NESBITT
HENRY S. SCHRADER
CHARLES J. SCHUCK
Williamson
LAFE B. CHAFIN
J. BROOKS LAWSON
Winfield
C. E. COPEN

Wisconsin
Appleton
ALFRED S. BRADFORD
EDWIN S. GODFREY
GUSTAVE J. KELLER
OSCAR J. SCHMIEGE
JAMES L. MCMONIGAL
THEODORE PENN
Ashland
Burlington
EDWIN J. BOYLE
THEODORE D. WOOLSEY
Beloit
GEORGE A. GARRIGAN
Berlin
Chilton
GEORGE M. GOGGINS
Chippewa Falls
HENRY CHRISTOFFERSEN
ORRIN H. LARRABEE
RONALD F. NORTH
Clintonville
R. J. MCMAHON
Colby
GORTON T. VORLAND
Crivitz
HARRY SHERNOFF
Cumberland
DANIEL I. D'AMICO
Delavan
EVERETT P. DOYLE
J. ARTHUR MORAN
Eau Claire
FRANCIS J. WILCOX
Elkhorn
LYMAN K. ARNOLD
JOHN D. VOSS
Fennimore
JOHN N. KRAMER
Fond du Lac
JOSEPH D. DONOHUE
CECILIA DOYLE
JOHN P. MCGALLOWAY
EDWARD T. O'NEILL
ALFRED D. SUTHERLAND
Green Bay
BERNARD BERK
C. G. CHADEK
FRANK P. CORNELISEN
ARCHIE MCCOMB
ALEX WILMER
Hayward
E. G. WURSTER
Janesville
DAN W. MCCLUSKEY
HIRAM M. NOWLAN
SIDNEY J. THRONSON
Kenosha
REMO Z. CAMERANESI
MATT TAYLOR
Kiel
R. W. KUEHLTHAU
La Crosse
ERNEST O. HANSON
Ladysmith
RODNEY LEE YOUNG
Lancaster
U. G. BUSSAN
GEORGE F. FRANTZ
Madison
EDGAR M. ALSTAD
ROBERT W. ARTHUR
EDWARD T. FAIRCHILD
STEPHEN E. GAVIN, JR.
B. W. HUISKAMP
RALPH M. IMMELL
FLOYD W. MCBURNEY
ARNOLD R. PETERSEN
PHILIP H. PORTER
FRANK A. RENTZ
HARRY H. RESH
F. D. SHUTTLEWORTH
GORDON SINYKIN
JAMES F. SPOHN
OSCAR T. TOEBAAS
Manitowoc
R. W. SCHWARTZ
Marinette
L. W. STAUDENMAIER
Marshfield
ROBERT E. EMERY
HOWARD B. WOODSIDE
Medford
CLIFFORD L. CURRAN
Merrill
LEONARD F. SCHMITT
Milwaukee
LAWSON ADAMS
ERNEST F. AUGUSTINE
T. FRED BAKER
RUSSELL A. CLARK
THEODORE W. COGGS
ROBERT J. DAVIDSON
WILLIAM C. DILL
DAVID E. FONS
RICHARD M. FORESTER
JOSEPH T. GALLAGHER
LEWIS E. GIULI
WILLIAM R. GOLD
ALFRED G. GOLDBERG
CHARLES L. GOLDBERG
E. HAROLD HALLOWS
GERALD P. HAYES
EMIL HERSH
STANLEY V. JACOBSON
IRA MILTON JONES
MICHAEL KLEIN
FLOYD J. KOPS
JOHN E. KRUEGER
HAROLD A. LENICHECK
SYDNEY N. LESHIN
MICHAEL LEVIN
IDA E. LUICK
ROBERT E. MCINTIRE
OMAR T. MCMAHON
ADOLPH I. MANDELKER
GEORGE A. MAYER
NORMAN L. MISWALD
ALFRED H. NICOLAUS
ERIC W. PASSMORE
JAMES I. POOLE
JAMES D. PORTER
CHARLES A. PRUDELL
PAUL PIKE PULLEN
JOSEPH E. RAPKIN
JOHN E. REILLY, JR.
RICHARD M. RICE
RALPH K. ROSENBAUM
B. F. SALTZSTEIN
FREDERIC SAMMOND
WALTER SCHINZ, JR.
A. C. SCHMIDT
ARTHUR SNAPPER
GEORGE D. SPOHN
C. R. STEINMETZ
HAROLD W. STORY
DANIEL W. SULLIVAN
ROLAND J. TESKE
HERBERT E. TOELLE
ELLIOT WALSTEAD
KENNETH F. WEBSTER
MALCOMB K. WHYTE
DOROTHY WILKINSON
URBAN R. WITTIG
BERNARD G. WOZNIAK
CORNELIUS T. YOUNG
Monroe
F. EARL LAMBOLEY
Neenah
L. O. COOKE
CHARLES H. VELTE
Neillsville
BRUCE F. BEILFUSS
A. L. DEVOS
Oconomowoc
ALVIN G. BRENDEMUEHL
BURTON R. PERRIGO
Oshkosh
FRANKLIN MCDONALD
HARRY E. MEYER
EUGENE G. WILLIAMS
Park Falls
ARTHUR DEBARDELEBEN
Portage
ROSS BENNETT
ELTON J. MORRISON
T. J. SANDERSON
Port Edwards
SAMUEL A. CASEY
Racine
MILTON J. KNOBLOCK
HAROLD A. KONNAK
HAROLD R. SHEETS
FRANCIS H. WENDT
Rice Lake
S. P. RIGLER
River Falls
KENNETH S. WHITE
Sheboygan
H. S. HUMKE
A. MATT WERNER
J. W. WILKUS
Sturgeon Bay
GROVER M. STAPLETON
Tomahawk
ROBERT G. HERBERT
Waukesha
LEON L. BRENNER
RICHARD N. HUNTER
KENNETH K. LUCE
Waupaca
RICHARD E. JOHNSON
Wausau
WILLIAM F. KRUEGER
MILES LAMBERT
J. M. SWEITZER
Wauwatosa
JOHN P. CANNON
ROBERT J. HAUGH
West Allis
NICHOLAS F. LUCAS
West Bend
EDWARD J. GEHL
STEPHEN O'MEARA
C. J. SCHLOEMER
Wisconsin Dells
FRANCIS R. BANNEN
Wisconsin Rapids
A. J. CROWNS